

In the Matter Of:

AMERICAN COUNCIL OF THE BLIND OF IN, ET AL.

-v-

IN ELECTION COMMISSION, ET AL.

Bradley King, 30(b)(6) SOS

December 20, 2021

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	Valerie Warycha (by Zoom)					
	Julia Robaidek (by Zoom)					

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<p>1 THE REPORTER: My name is Michele Gustafson, 2 an associate of Stewart Richardson Deposition 3 Services, located at One Indiana Square, 4 Suite 2425, Indianapolis, Indiana. Today's date is 5 December 20, 2021. The time is 10:00 a.m. This 6 deposition is being held via Zoom. The deponent's 7 name is Bradley King.</p> <p>8 Will counsel please identify themselves and 9 any persons present with you for the record.</p> <p>10 MS. BRANDT-YOUNG: Christina Brandt-Young, 11 Disability Rights Advocates, for the plaintiffs.</p> <p>12 MR. CRISHON: Tom Crishon, Indiana Disability 13 Rights, for the plaintiffs.</p> <p>14 MS. KOLIC: Jelena Kolic, Disability Rights 15 Advocates, for the plaintiffs as well.</p> <p>16 MS. BICHELL: Rosa Lee Bichell, 17 Disability Rights Advocates, for the plaintiffs as 18 well.</p> <p>19 MS. ABSHIRE: For Defendants we've got me, 20 Courtney Abshire. We also have Caryn Szyper, which 21 is spelled S-z-y-p-e-r. We also have present 22 Jerry Bonnet, client representative for the 23 Secretary of State, and we also have 24 Valerie Warycha, client representative for the 25 Indiana Election Division. Warycha is spelled</p>	<p>Page 5</p> <p>1 MS. BRANDT-YOUNG: Wonderful. So I'm going to 2 read in the particular page and line numbers. 3 Courtney, please follow along carefully and correct 4 me if I make any mistakes. Okay?</p> <p>5 MS. ABSHIRE: All right.</p> <p>6 MS. BRANDT-YOUNG: All right. So the 7 Secretary of State is designating page 12, line 25 8 to page 14, line 8; page 15, line 4 to page 18, 9 line 23; page 19, lines 14 to 23; page 20, line 5 10 to page 21, line 1; page 27, line 14 to page 62, 11 line 7; page 68, line 21 to page 69, line 19; 12 page 69, line 20 to page 79, line 24; page 88, 13 line 5 to page 94, line 7; page 94, lines 12 to 17; 14 page 96, line 3 to page 105, line 8; page 108, 15 line 13 to page 125, line 20; page 126, line 21 to 16 page 137, line 25; page 144, line 13 to page 148, 17 line 16; page 149, lines 2 through 13; page 156, 18 line 10 to page 157, line 10; page 163, line 4 to 19 page 165, line 1; page 171, line 4 through line 12; 20 page 187, line 19 through page 189, line 20; 21 page 202, lines 8 through 20; page 204, lines 20 to 22 24; page 210, line 16 to page 213, line 1; 23 page 213, line 17 to page 216, line 6.; and finally 24 page 229, line 4 to page 230, line 14.</p> <p>25 Courtney, do you agree those are correct?</p>
<p>1 W-a-r-y-c-h-a.</p> <p>2 THE REPORTER: Sir, if you can raise your 3 right hand for me, please.</p> <p>4 BRADLEY KING</p> <p>5 having been first duly sworn to tell the truth, the 6 whole truth, and nothing but the truth took the stand 7 and testified as follows:</p> <p>8 MS. BRANDT-YOUNG: Very good. We have a 9 matter of business to put on the record before we 10 get going. So, Courtney, could we have you on the 11 screen here?</p> <p>12 MS. ABSHIRE: Ready.</p> <p>13 MS. BRANDT-YOUNG: Very good. So the last 14 deposition in this case was taken on Thursday, 15 the 16th of December. That was the deposition of 16 the Indiana Election Division. As I understand it, 17 the Secretary of State's office, which is having 18 its deposition taken today, has agreed to designate 19 the following portions of the rough transcript from 20 the Indiana Election Division's testimony as its 21 own testimony here today as well, subject to 22 finalization of the transcript and any 23 non-substantive errata.</p> <p>24 Courtney, do I have that correct?</p> <p>25 MS. ABSHIRE: Yes.</p>	<p>Page 6</p> <p>1 MS. ABSHIRE: Yes.</p> <p>2 MS. BRANDT-YOUNG: Fantastic. Counsel, among 3 the deposition exhibits that we e-mailed to you a 4 few minutes ago appears a .txt file entitled, 5 quote, King Rough Draft, end quote, which I 6 represent as being the file distributed to both of 7 us by the court reporter from the Indiana Election 8 Division deposition on December 16. Do you agree 9 to mark it as Exhibit A to today's deposition for 10 purposes of the stipulation?</p> <p>11 MS. ABSHIRE: Give me just a second. Yes, I 12 agree.</p> <p>13 MS. BRANDT-YOUNG: Wonderful. Are there any 14 corrections or additions?</p> <p>15 MS. ABSHIRE: Not to what you just said.</p> <p>16 MS. BRANDT-YOUNG: Great. Then I think we're 17 ready to proceed.</p> <p>18 MS. ABSHIRE: There we go. Think we're ready.</p> <p>19 MS. BRANDT-YOUNG: Wonderful.</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MS. BRANDT-YOUNG:</p> <p>22 Q So, Mr. King, it's lovely to see you again. I hope 23 you had a restful weekend.</p> <p>24 A I did. Thank you very much. And you?</p> <p>25 Q Same. Thank you. So as you heard, there are</p>

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<p>Page 9</p> <p>1 portions of Thursday's deposition that we're not 2 going to repeat today because the testimony that 3 you gave then has been designated. Nonetheless, to 4 make a clear record, we're going to review some 5 things today.</p> <p>6 So let's start with a bunch of rules that I 7 believe you already know but that we want to put on 8 the record just to have the record be clear. That 9 is, today we're all appearing by Zoom. I can see 10 your head and shoulders in the camera. I know 11 there are people there in the room with you who 12 have a right to be there, and I'm asking that there 13 be no discussion, no hand motions, no coaching from 14 off the camera that we can't see. Do you agree to 15 that?</p> <p>16 A Yes, I do.</p> <p>17 Q Also, because we can't see what's going on, we're 18 asking that you not be looking at any documents, 19 with the exception of deposition exhibits or 20 documents that we discuss that would refresh your 21 recollection; not to use devices other than this 22 computer and a laptop to look at exhibits where the 23 exhibit is the only thing visible on the screen; 24 and that no one is passing notes, making gestures, 25 or otherwise coaching the testimony. Do you agree?</p>	<p>Page 11</p> <p>1 Q And you understand that you're under oath today the 2 same as if you were giving testimony before a 3 judge?</p> <p>4 A Yes, I do.</p> <p>5 Q As you know, during your deposition I'm going to be 6 introducing some exhibits which will appear on your 7 screen and your attorney's screen via the screen 8 share platform. We've also distributed those 9 exhibits by e-mail so that you can open them and 10 scroll them on a computer of your own. Sound good?</p> <p>11 A Very good.</p> <p>12 Q Do you agree not to communicate via text, IM, 13 e-mail, or other forms of outside communication 14 while we're on the record?</p> <p>15 A I do.</p> <p>16 Q And you agree not to look at documents or other 17 papers while you're on the record except those 18 introduced and discussed on the record; is that 19 right?</p> <p>20 A Yes, I agree.</p> <p>21 Q Thank you. We need you to respond orally for the 22 court reporter. She can't respond to head or hand 23 gestures. Is that okay?</p> <p>24 A Yes, it is.</p> <p>25 Q If a question is not clear to you, if you don't</p>
<p>Page 10</p> <p>1 A Yes, I do.</p> <p>2 Q Thank you. For the purposes of speeding things up, 3 do I understand correctly that you've had your 4 deposition taken four times before?</p> <p>5 A I believe I referenced three. I do recall a fourth 6 deposition which came to mind, which I can mention. 7 I was deposed in a case brought by Judicial Watch 8 against the Secretary of State and 9 Election Division with regard to voter list 10 maintenance and I believe that was in approximately 11 2008.</p> <p>12 Q Were voters with disabilities particularly at issue 13 in this case?</p> <p>14 A No, they were not.</p> <p>15 Q And then the fourth deposition I was thinking of 16 was the one that you had on Thursday which voters 17 with disabilities are definitely at issue?</p> <p>18 A Right, that would be correct. So our grand total I 19 guess would be five.</p> <p>20 Q Yes. Do you have any other documents with you in 21 the room today?</p> <p>22 A I do not.</p> <p>23 Q Are there any documents within your field of 24 vision?</p> <p>25 A None within my field of vision, no.</p>	<p>Page 12</p> <p>1 understand what I mean, please tell me. Is that 2 okay?</p> <p>3 A Yes, I certainly will.</p> <p>4 Q Great. If you can't hear me, if you can't 5 understand, if you're just not sure of what it is 6 that I'm asking, please ask me and I will clarify. 7 Is that okay?</p> <p>8 A Yes indeed.</p> <p>9 Q Great. Sometimes I am going to interrupt you for 10 the purpose of saving time. It is rude and I 11 apologize in advance, but it will make things go 12 more efficiently. Is that okay?</p> <p>13 A Yes, it's okay. I certainly understand that.</p> <p>14 Q Thank you. If you need a break, please let me 15 know. Not while a question is pending. We'll 16 finish the question and then, by all means, let's 17 take a break.</p> <p>18 A Very good.</p> <p>19 Q Sometimes I'm going to ask you to repeat yourself. 20 In fact, many times I will ask you to repeat 21 yourself. It helps me understand, and I apologize 22 in advance. Is that okay?</p> <p>23 A Yes, it is.</p> <p>24 Q Great. I'm asking you today for your best 25 recollection in response to my questions. If you</p>

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<p style="text-align: right;">Page 13</p> <p>1 don't remember the exact words of a conversation, 2 for instance, you have to answer what you remember 3 the gist of the conversation and the substance of 4 what was said, even if you don't remember the exact 5 words. Will you do that?</p> <p>6 A Yes, I will.</p> <p>7 Q Thank you. While you should not guess or 8 speculate, I'm entitled to the best estimate that 9 you can give about things. The traditional example 10 of this is that if I ask you to estimate the length 11 of the table where you're sitting, it would require 12 your best estimate but you have a basis for doing 13 that. Whereas if I ask you to estimate the length 14 of the table where I'm sitting, you don't have a 15 basis to estimate because you've never seen it.</p> <p>16 Will you give me your best estimate when you have a 17 basis for one?</p> <p>18 A Yes, I will.</p> <p>19 Q Thank you. If at any time during this deposition 20 or during a break you remember something about a 21 question that I've asked you before, please just 22 let me know and we'll go back to it. Will you do 23 that for me?</p> <p>24 A Yes, I will.</p> <p>25 Q Thank you. If at any point you're having issues</p>	<p style="text-align: right;">Page 15</p> <p>1 Indiana election requirements and procedures, to 2 respond to state and local and media inquiries 3 about those things, to assist the Secretary of 4 State and the Indiana Election Commission, and you 5 have management duties at the agency like budgets 6 and human resources. Is all that mostly right?</p> <p>7 A That's all correct.</p> <p>8 Q Also, you hold an annual conference for county 9 election administrators that includes their federal 10 and state legal duties for voters with 11 disabilities. Is that also correct?</p> <p>12 A Yes, that is.</p> <p>13 Q Anything important about the job title that you 14 currently hold that I left out?</p> <p>15 A No. I believe you've covered the essential parts 16 of the position.</p> <p>17 Q Great. Is it fair to say that 100 percent of the 18 work of the Indiana Election Division relates 19 broadly to elections?</p> <p>20 A Yes. I would say with the caveat that there are 21 some duties that are broader in terms of their 22 application to all state agencies, whether that 23 involves protocols for cybersecurity or physical 24 safety within our offices, but generally speaking, 25 yes.</p>
<p style="text-align: right;">Page 14</p> <p>1 with the audio, let me know. We want everything to 2 be clear. Okay?</p> <p>3 A Certainly.</p> <p>4 Q Where are you located right now?</p> <p>5 A I'm located in the Office of the Attorney General 6 of the State of Indiana in Indiana Government 7 Center South on the fifth floor.</p> <p>8 Q Is there any reason you can't give full, complete, 9 and accurate testimony today?</p> <p>10 A No, there is not.</p> <p>11 Q All right. Can you tell us your current position, 12 please.</p> <p>13 A I serve as co-director of the Indiana Election 14 Division of the office of the Secretary of State of 15 Indiana.</p> <p>16 Q And for the purpose of speeding things along, I'm 17 going to represent that, as I understand it, you've 18 been the co-director since 2002?</p> <p>19 A That's correct.</p> <p>20 Q You supervise a staff of four people?</p> <p>21 A That's correct.</p> <p>22 Q And there's a total of ten staff at the 23 Indiana Election Division?</p> <p>24 A Yes, that's correct.</p> <p>25 Q Your job is to serve as an information source about</p>	<p style="text-align: right;">Page 16</p> <p>1 Q Have you ever been employed by the Indiana 2 Secretary of State as opposed to the Indiana 3 Election Division?</p> <p>4 A No, I have not.</p> <p>5 Q Do you interact with the Secretary of State's 6 office in the role that you have now?</p> <p>7 A Yes, I do.</p> <p>8 Q Can you please estimate the percentage of the work 9 of the Secretary of State's office that relates 10 broadly to elections as opposed to other things.</p> <p>11 A The best estimate I would have would be in the 12 neighborhood of 5 to 10 percent of the total work 13 of the Secretary of State's office.</p> <p>14 Q How many dedicated employees of the Secretary of 15 State's office work on election-related matters?</p> <p>16 A To my knowledge, there is only one dedicated 17 employee of the Secretary of State's office, the 18 director of election modernization, whose duties 19 are almost exclusively related to the 20 administration of elections.</p> <p>21 Q Who holds that title currently?</p> <p>22 A Jay, J-a-y, Phelps, P-h-e-l-p-s.</p> <p>23 Q Can you tell us about his duties, please.</p> <p>24 A I'm sorry. Would you repeat that?</p> <p>25 Q Yes. Can you tell us about his duties, please.</p>

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<p>Page 17</p> <p>1 A Yes. Mr. Phelps advises the Secretary of State 2 with regard to many of the initiatives that the 3 office of the Secretary of State has undertaken in 4 recent years involving modernization, such as the 5 acquisition of voter verifiable paper audit trails, 6 VVPATs, with regard to issues related to voting 7 systems and electronic poll books in particular, 8 which are the charge of the Secretary of State to 9 certify. Mr. Phelps would also be a representative 10 for the Secretary of State's office at conferences 11 of election officials and perform other public 12 outreach duties. I believe that is a fair 13 description of the responsibilities of his job.</p> <p>14 Q What role does he have, if any, in implementing 15 Senate Enrolled Act 398 of 2021?</p> <p>16 A He would have a number of roles with regard to the 17 implementation of the Senate Enrolled Act you 18 mentioned. I've already referenced communication 19 regarding the implementation of requirements in 20 that Act, such as the implementation of VVPATs on 21 direct record electronic systems. He would be 22 involved with the monitoring of the budget and 23 expenditures or grants made to counties with regard 24 to initiatives contained in Senate Bill 398, such 25 as the ones concerning voters with print</p>	<p>Page 19</p> <p>1 Q All right. What did you do in preparation for 2 today's deposition?</p> <p>3 A I reviewed the various documents that were 4 introduced into the record of the previous 5 deposition, along with additional documents that 6 were prepared by counsel with information 7 concerning the Secretary of State's office in 8 particular. I also spoke with counsel, 9 Jerry Bonnet and Valerie Warycha, to prepare for 10 the deposition today.</p> <p>11 Q Did you speak with anyone not a lawyer in 12 preparation for today's deposition?</p> <p>13 A No.</p> <p>14 Q How many hours did you spend preparing for today's 15 deposition?</p> <p>16 A I would estimate approximately eight to ten hours 17 in total.</p> <p>18 MS. BRANDT-YOUNG: So let the record reflect 19 that I'm marking the 30(b)(6) notice in this case 20 as Exhibit B.</p> <p>21 Q All right. I've opened the exhibit via screen 22 share. Can you see that document, sir?</p> <p>23 A Yes, I can.</p> <p>24 Q Is it a good size?</p> <p>25 A Yes, it is.</p>
<p>Page 18</p> <p>1 disabilities.</p> <p>2 Q You said that he is the only employee at the 3 Secretary of State's office dedicated to election 4 work. How many employees at the Secretary of 5 State's office have at least, let's say, 25 percent 6 of their duties that regularly pertain to 7 elections?</p> <p>8 A I would preface my response by saying this is 9 certainly an estimate. I would say that an 10 additional five, perhaps as many as ten would have 11 some significant duties related to the election 12 work performed by the Secretary of State, primarily 13 with regard to the budget of the Secretary of 14 State's office and with regard to communications to 15 the public and the voters. But those duties would 16 also extend to other parts of the Secretary of 17 State's budget unrelated to elections and other 18 communications on not election topics.</p> <p>19 Q On a day-to-day basis how familiar are you in the 20 subjects and goals of the work of the Secretary of 21 State as it relates to elections?</p> <p>22 A I would say reasonably familiar. I'm certainly in 23 regular communication with individuals who are 24 employed by the Secretary of State to perform the 25 duties I've described.</p>	<p>Page 20</p> <p>1 Q Great. You're welcome to open the 30(b)(6) notice 2 on any computer that you may have with you if that 3 provides ease in scrolling.</p> <p>4 MS. BRANDT-YOUNG: For those following along, 5 the name of the file is ACBI Sec of State 30.B.6 6 notice 12.14.21.</p> <p>7 THE WITNESS: I may ask for assistance. I'm 8 not getting much cooperation with the two-fingered 9 scrolling on my particular laptop, so . . .</p> <p>10 MS. BRANDT-YOUNG: By all means, please do.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 A Yes, I am able to scroll now, I think.</p> <p>13 Q Very good. So let's scroll together down to 14 Topic No. 1. This should appear on .pdf page 5.</p> <p>15 A Yes, I see that.</p> <p>16 Q Great. So the topic is, The relationship between 17 Defendant Indiana Election Commission, Secretary of 18 State, and Election Division and any County Board 19 of Elections regarding the design, organization, 20 and operation of local, state, and federal 21 elections in Indiana.</p> <p>22 Do you see that there?</p> <p>23 A Yes, I do.</p> <p>24 Q Who is the person at the Secretary of State's 25 office who is the most knowledgeable about this</p>

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<p>1 topic?</p> <p>2 A With regard to this particular topic, I would 3 identify Jerry Bonnet as probably the most 4 knowledgeable individual.</p> <p>5 Q And Mr. Bonnet is a lawyer, is he not?</p> <p>6 A Yes, he is.</p> <p>7 Q Who is the most knowledgeable non-lawyer at the 8 Secretary of State's office about this topic?</p> <p>9 A I would hesitate just based on the limited 10 acquaintance I have with some individuals who've 11 just recently joined the Secretary of State's 12 office. I would identify Rachel Hoffmeyer, the 13 Deputy Secretary of State, and Jay Phelps, the 14 individual I mentioned earlier. I would not be 15 able to choose between them, I think.</p> <p>16 Q But you're prepared to testify on behalf of the 17 Secretary of State about this topic today; is that 18 right?</p> <p>19 A I am.</p> <p>20 Q Great. Under what circumstances would a county 21 board of elections contact the Secretary of State?</p> <p>22 A A county election board would contact the 23 Secretary of State either as an entity if it were 24 conducting business and an issue came up that the 25 election board felt prompted to contact the</p>	<p>Page 21</p> <p>1 Q Under what circumstances would they apply to the 2 Secretary of State rather than the Indiana Election 3 Division for that kind of information?</p> <p>4 A I think that would vary depending upon the 5 individual member of the county election board with 6 regard to whether they were personally acquainted 7 or had worked in the past with a member of the 8 Secretary of State's office, such as Mr. Phelps, or 9 the Election Division, myself.</p> <p>10 Q You said that a county election board might contact 11 the Secretary of State about federal funding 12 relating to the accessibility of polling places; is 13 that right?</p> <p>14 A Yes, that's correct.</p> <p>15 Q Is it fair to say that they would be contacting the 16 Secretary of State because the Secretary of State 17 administers that funding and the county board of 18 elections is exploring possibly receiving some?</p> <p>19 A I think that would be a fair possibility. It might 20 be a more general inquiry but could very well be 21 for that reason.</p> <p>22 Q Is there federal funding that a county board of 23 elections would apply for directly or receive 24 directly from the federal government rather than 25 through the Secretary of State as an administrator</p>
<p>Page 22</p> <p>1 Secretary of State's office for guidance. I'm not 2 aware that that has occurred with regard to the 3 Secretary of State, but I know that it does occur 4 with regard to the Indiana Election Division. 5 Individual members, the circuit court clerk and the 6 generally two appointed members, will often contact 7 the Secretary of State's office with regard to 8 either pending projects or responsibilities in the 9 election cycle or with regard to the application of 10 law in a particular election matter.</p> <p>11 Q What kinds of projects might a county board of 12 elections contact the Secretary of State about?</p> <p>13 A One example currently would be the implementation 14 of redistricting based on the enactment of new 15 congressional and state legislative districts by 16 the General Assembly.</p> <p>17 Q Would a county board of elections contact the 18 Secretary of State with regard to 19 disability-related topics?</p> <p>20 A A county election board might contact the office of 21 the Secretary of State to ask about the 22 availability of state or federal funding for 23 improvements in accessibility and with regard to 24 requirements under the law that are applicable to 25 the county.</p>	<p>Page 24</p> <p>1 that relates to polling place accessibility?</p> <p>2 A I am not familiar with any federal funding 3 available that a county election board could 4 directly apply for.</p> <p>5 Q So it would be through the Secretary of State as 6 administrator of the federal funding; is that 7 right?</p> <p>8 A Yes, that would be my understanding. I believe 9 that until the enactment of the Help America Vote 10 Act in 2002 that the Federal Government had not 11 previously made funding available to states or 12 local jurisdictions for election purposes 13 generally, and so any federal program under that 14 statute or under other federal appropriations would 15 be the prompt for a county to contact the 16 Secretary of State to obtain more information.</p> <p>17 Q As a matter of practice, how frequently do you 18 think that county boards of elections contact the 19 Secretary of State for guidance or assistance?</p> <p>20 A I would say on a regular basis. The Secretary 21 herself visits many Indiana counties and attempts 22 to visit all 92 counties during the course of a 23 calendar year, and so there's an opportunity for 24 in-person inquiries and dialogue between county 25 election officials and the Secretary of State. But</p>

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<p>1 in addition to that, I think many county clerks 2 because of that personal acquaintance would feel 3 comfortable and prompted to contact the 4 Secretary of State's office for additional 5 information.</p> <p>6 Q And going back briefly to the question of federal 7 funding that might be available to county boards of 8 elections, is there any such funding that's been 9 available in, say, the last year?</p> <p>10 A In the last twelve months, perhaps I can say, there 11 certainly was some federal funding available 12 through the CARES Act and through HAVA 13 appropriations that came to the State concerning 14 election security. Some of those funds, such as 15 the 2020 CARES Act funds, expired on December 31 of 16 2020 and so are no longer available but currently 17 fall within that twelve-month period I reference.</p> <p>18 Q What assistance does the Secretary of State's 19 office provide to a county board of elections when 20 there is an election held locally?</p> <p>21 A The role of the Secretary of State with regard to 22 local administration is limited. The duties of the 23 office of Secretary of State with regard to 24 elections are primarily ministerial in working with 25 the Election Division to certify the results of</p>	<p>Page 25</p> <p>1 detailed but it would require the assistance of an 2 entity like a prosecuting attorney or other entity 3 with law enforcement powers to conduct certain 4 types of investigations, and so as a result the 5 investigatory powers of the office of Secretary of 6 State are limited.</p> <p>7 Q Does the Secretary of State have the ability to 8 discipline or enforce after making a finding in an 9 investigation?</p> <p>10 A Is your question in general or is it confined to 11 counties?</p> <p>12 Q Thank you. Let's start with counties and work our 13 way up.</p> <p>14 A With regard to counties, no, the Secretary has no 15 authority to discipline a county election official 16 or a county election board. The Secretary of State 17 does have the authority in her capacity as the 18 officer who certifies electronic poll books to 19 impose civil penalties upon electronic poll book 20 vendors who fail to comply with the Indiana 21 statutes that govern those devices.</p> <p>22 Q Does the Secretary of State provide any services to 23 assist counties who are formatting their ballots or 24 ballot styles?</p> <p>25 A Not to my knowledge.</p>
<p>Page 26</p> <p>1 election and then to on the administrative side be 2 involved with the issuance of commissions and 3 certificates to elected officials to begin their 4 service in office. Beyond those largely 5 ministerial and administrative things, the 6 Secretary of State does not have a direct role in 7 the administration of elections by in Indiana a 8 county election office.</p> <p>9 Q Does the Secretary of State's office issue guidance 10 to county boards of elections that is different or 11 separate than the guidance offered by the IED?</p> <p>12 A The guidance offered by the Secretary of State is 13 much less frequent than the guidance issued by the 14 Indiana Election Division. As I recall, guidance 15 has typically been focused on the availability of 16 funding for accessibility through the programs I 17 referenced earlier, but the Secretary of State's 18 office very seldom issues guidance with regard to 19 substantive matters of election law.</p> <p>20 Q Can the Secretary of State investigate a county 21 board of elections if necessary?</p> <p>22 A The Secretary of State has the authority to conduct 23 investigations under her general designation as the 24 state election official in Indiana Code 3-6-3.7. 25 The particulars of that investigatory power are not</p>	<p>Page 28</p> <p>1 Q That's a role for the Indiana Election Division?</p> <p>2 A Yes, that would be correct. The Indiana Election 3 Division for several years has offered assistance 4 to counties to conduct a high-level review of 5 sample ballots that a county would provide to 6 ensure that their content and format complied with 7 Indiana statutes.</p> <p>8 Q And that's advisable because a ballot is a complex 9 document; right?</p> <p>10 A It certainly is.</p> <p>11 Q Here are a couple of questions just to get them on 12 the record and have a clear transcript for today. 13 How many counties are there in Indiana?</p> <p>14 A There are 92.</p> <p>15 Q Each one is responsible for the content and 16 formatting of its own ballot styles; is that 17 correct?</p> <p>18 A Yes, that is correct, generally through their 19 county election board.</p> <p>20 Q And there are a wide variation between the counties 21 in terms of their staffing levels and workload? Is 22 that fair to say?</p> <p>23 A Yes, that is certainly true.</p> <p>24 Q There are approximately 4,500 precincts in Indiana 25 where people might vote; is that right?</p>

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<p>Page 29</p> <p>1 A Yes, that's correct, somewhere between 4,500 and 2 perhaps approaching 5,000. We're in the process of 3 having precinct boundary changes now, and so the 4 exact number will vary.</p> <p>5 Q And for each precinct in a primary election, for 6 instance, you might need a democratic ballot style, 7 a republican ballot style, and potentially a 8 nonpartisan referendum ballot at a minimum; right?</p> <p>9 A Yes, that's correct at a minimum.</p> <p>10 Q So in the whole state for a primary election there 11 could be as many as 2,500 to 3,000 ballot styles; 12 is that right?</p> <p>13 A That's a good estimate.</p> <p>14 Q Is there anything else that we should know in order 15 to understand the number of ballot styles that 16 might be necessary in a single election statewide?</p> <p>17 A What I would add to what you've already referenced 18 is that in federal elections there are some special 19 ballots that are generated for the use of UOCAVA 20 voters, which are referred to as the federal only 21 ballot, where because an individual is presently 22 overseas and their intent to return to the 23 United States is not certain those individuals by 24 virtue of their U.S. citizenship only qualify to 25 vote for the federal offices on the ballot and,</p>	<p>Page 31</p> <p>1 notice, again for a moment. Oh, sorry. We're 2 still there. I apologize. Let's take a look at 3 Topic No. 2.</p> <p>4 A Yes, I see that.</p> <p>5 Q Great. This is the design, organization, and 6 operation of local, state, and federal elections in 7 Indiana, including but not limited to: 8 Elections that take place in a location other 9 than a formally designated polling place or 10 elections office, those under the Uniform Overseas 11 and Civilian Absentee Voting Act, and auxiliary 12 aids and services offered to voters with 13 disabilities by the Defendant Indiana Election 14 Commission, Secretary of State, or any County Board 15 of Elections.</p> <p>16 A Yes, I see that.</p> <p>17 Q Great. Who is the person at the Secretary of State 18 who is most knowledgeable about this topic?</p> <p>19 A I would identify Jerry Bonnet as that individual.</p> <p>20 Q And Mr. Bonnet serves as counsel at the 21 Secretary of State's office; is that right?</p> <p>22 A That's correct.</p> <p>23 Q Is there anyone who doesn't serve in a capacity as 24 a lawyer at the Secretary of State who you think is 25 the next most knowledgeable about this topic?</p>
<p>Page 30</p> <p>1 therefore, that's the ballot style that would have 2 to be provided both in a primary and in a general 3 election.</p> <p>4 Q Are there any other major factors that you can see 5 that would influence the number of ballot styles 6 that might be necessary in a single election in a 7 year?</p> <p>8 A The factors that influence specific election are 9 primarily the result of the schedule for electing 10 offices. So that, for example, in 2022 Indiana's 11 1,008 township officers will be on the ballot, and 12 those consist of four individual officers, and as a 13 result the number of candidates, the number of 14 ballot styles is impacted as a result. A year like 15 2022 in the election cycle probably has more ballot 16 styles than the lowest number of ballot styles 17 which would occur in a municipal year such as 2019 18 or 2023 when not all voters live in municipalities 19 and, therefore, would not have ballot styles that 20 reflect that.</p> <p>21 Q So it's fair to say that the number of ballot 22 styles required for any election is cyclical and 23 fluctuating. Is that fair?</p> <p>24 A Yes, that's fair.</p> <p>25 Q All right. Let's return to Exhibit B, the 30(b)(6)</p>	<p>Page 32</p> <p>1 A I would again identify Jay Phelps, the director of 2 election modernization, who served as a circuit 3 court clerk in Bartholomew County for almost 4 eight years and, therefore, has direct personal 5 experience with this issue.</p> <p>6 Q For today you're prepared to testify on behalf of 7 the Secretary of State's office about it?</p> <p>8 A I am.</p> <p>9 Q Great. So let's stop sharing that for a moment. 10 So, again, for purposes of clarity of the record, 11 I'm going to try and summarize what absentee voting 12 means under Indiana law and you tell me if I've got 13 it right. Okay?</p> <p>14 A Certainly.</p> <p>15 Q Great. So in Indiana absentee voting can mean two 16 things. In Indiana anyone registered to vote can 17 cast a vote, number one, before election day; 18 number two, in person at a location designated for 19 that, usually an elections office; number three, on 20 a voting machine or whatever method that county 21 uses for voting in person. And that's one type of 22 absentee voting under Indiana statutes; is that 23 correct?</p> <p>24 A That's correct.</p> <p>25 Q There's another meaning to the phrase absentee</p>

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<p style="text-align: right;">Page 33</p> <p>1 voting under Indiana law, which is that anyone who 2 is registered to vote who can demonstrate one of 13 3 enumerated excuses may fill out a form to apply for 4 permission to fill out an absentee ballot, number 5 one, before or on election day; number two, 6 somewhere other than in person at an elections 7 office; and then, number three, transmits the 8 ballot to the State that's been filled out off site 9 either at an elections office or by postal mail, 10 fax, or e-mail. And we call this voting by mail; 11 is that right?</p> <p>12 A Yes, that's generally correct. I would simply add 13 to it that the individual voter does have the 14 opportunity, along with certain designated 15 individuals, to return the ballot physically rather 16 than using the U.S. mail.</p> <p>17 Q And another clarification would be that returning 18 the completed ballot by fax or e-mail is not 19 available to every qualified absentee voter in 20 Indiana, only certain qualified voters? Is that 21 also accurate?</p> <p>22 A Yes, that is correct.</p> <p>23 Q So we'll note for purposes of today's transcript 24 that the latter type of voting that occurs not in a 25 polling place is the type that is concerned in this</p>	<p style="text-align: right;">Page 35</p> <p>1 Q Are you aware of anyone ever having requested the 2 absentee ballot itself and related materials to it 3 in alternate formats?</p> <p>4 A Certainly not on behalf of themselves as a voter.</p> <p>5 Q Are you aware of anyone doing it on behalf of 6 someone else as a voter?</p> <p>7 A I am aware of communications from various groups or 8 entities that urge the Secretary of State's office 9 in this case to provide such materials generally to 10 voters who would benefit by them.</p> <p>11 Q And so far the Secretary of State has not issued 12 any generally-available guidance on how to do that; 13 is that correct?</p> <p>14 A I believe that's correct. I'm not aware of any 15 such guidance.</p> <p>16 Q Who at the Secretary of State's office would you 17 ask for more information about this?</p> <p>18 A The same individuals I identified previously, 19 Mr. Bonnet and Mr. Phelps.</p> <p>20 Q And for voters with disabilities who vote in person 21 either before or on election day, they vote in a 22 voting booth; correct?</p> <p>23 A That would be one method, yes.</p> <p>24 Q And a person with a disability who wants to vote in 25 person in a voting booth is entitled to take the</p>
<p style="text-align: right;">Page 34</p> <p>1 lawsuit and generally speaking if I speak of 2 absentee voting that's what I mean and the local 3 term for it is absentee vote by mail even though 4 it's not always by mail. Is that fair?</p> <p>5 A Yes, that would be fair.</p> <p>6 Q Okay. Thank you. So as we noted, absentee vote by 7 mail is not a right in Indiana. One must qualify 8 and apply for it. As of December 2020, a date 9 we've chosen in order to avoid the discussion of 10 Senate Enrolled Act 398 and how it may impact 11 voters with print disabilities looking to vote 12 absentee by mail, but as of December 2020, did the 13 Secretary of State's office provide any 14 generally-available guidance to county elections 15 officials on how to provide an absentee vote by 16 mail ballot application in alternate formats, such 17 as large print or braille?</p> <p>18 A No, not that I can recall.</p> <p>19 Q Are you aware of anyone ever having requested an 20 absentee ballot application in an alternate format?</p> <p>21 A I cannot recall any specific instance of someone 22 making that request to me.</p> <p>23 Q Are you aware of anyone ever making that request to 24 the Secretary of State's office?</p> <p>25 A Not specifically, no.</p>	<p style="text-align: right;">Page 36</p> <p>1 person of their choice, other than an employer or a 2 union official, into the voting booth to help them 3 if they want; isn't that right?</p> <p>4 A Yes, that's correct.</p> <p>5 Q That's set out in the Indiana Code and in federal 6 law; is that correct?</p> <p>7 A That is my understanding, yes.</p> <p>8 Q You mentioned on December 16 that this rule 9 reflects, quote, a balancing act so that the voter 10 is enabled to perform the most important function 11 of voting with the assistance of the individuals 12 chosen by the voter. Do you remember that?</p> <p>13 A I do.</p> <p>14 Q Tell me more about that, please.</p> <p>15 A I'm not certain I understand exactly your question.</p> <p>16 Can you clarify that a bit?</p> <p>17 Q So starting with that this is a balancing act so 18 that the voter is enabled to perform the most 19 important function of voting, what's the most 20 important function of voting?</p> <p>21 A The most important function of voting is that the 22 intent of the voter with regard to their support 23 for a particular candidate or a party or question 24 is correctly indicated as part of the election 25 process and included in the determination of the</p>

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<p>1 final result of the race.</p> <p>2 Q That the voter's choices be transmitted accurately</p> <p>3 and counted accurately, is that the sum of it?</p> <p>4 A Yes, that would be the sum of it.</p> <p>5 Q You said that there's a balancing act involved so</p> <p>6 that the voter's able to perform this most</p> <p>7 important function of voting. Can you explain the</p> <p>8 balancing act, please.</p> <p>9 A Yes. The balancing act involves individuals who</p> <p>10 for whatever reason, whether that is the inability</p> <p>11 to speak the language that the ballot uses or</p> <p>12 because of a physical limitation that the voter may</p> <p>13 have, that the voter requires assistance from other</p> <p>14 individuals to make certain that the voter's choice</p> <p>15 is accurately cast and reflected on the voter's</p> <p>16 ballot and that involves by definition a lessening</p> <p>17 of the voter's privacy in performing that function.</p> <p>18 Q So if a voter with a disability who votes in a</p> <p>19 voting booth is able to get the assistance of the</p> <p>20 person of their choice, subject to the restrictions</p> <p>21 we already mentioned, is a voter with a print</p> <p>22 disability who votes absentee by mail on a paper</p> <p>23 ballot also able to select the scribe of his or her</p> <p>24 choice to complete that paper absentee ballot</p> <p>25 instead of using the traveling board?</p>	<p>Page 37</p> <p>1 with the Secretary of State around this?</p> <p>2 MS. ABSHIRE: Objection. Vague.</p> <p>3 MS. BRANDT-YOUNG: Sure.</p> <p>4 Q Are you aware of any meetings that the Secretary of</p> <p>5 State has had to determine whether it would be a</p> <p>6 fundamental alteration to the absentee vote by mail</p> <p>7 scheme to permit voters with print disabilities to</p> <p>8 vote at home on a paper ballot using the assistance</p> <p>9 of the person of their choice to mark their choices</p> <p>10 on the ballot?</p> <p>11 A No, I am not.</p> <p>12 Q Are you aware of any conversations within the</p> <p>13 agency around that topic?</p> <p>14 A Can I ask you to clarify? When you say within the</p> <p>15 agency, I assume you're referring to the office of</p> <p>16 Secretary of State?</p> <p>17 Q Yes. Thank you.</p> <p>18 A No, I am not aware of any conversations relating to</p> <p>19 that.</p> <p>20 Q So as far as you know, it hasn't considered the</p> <p>21 issue at all; is that right?</p> <p>22 A Not except in the context, of course, the pending</p> <p>23 litigation.</p> <p>24 Q And has the Secretary of State's office completed</p> <p>25 any analysis to determine that it would be an undue</p>
<p>Page 38</p> <p>1 A Under the Indiana law at issue in this case and as</p> <p>2 addressed in Senate Enrolled Act 398, the voter's</p> <p>3 choice was limited in that scenario to the</p> <p>4 bipartisan traveling absentee board referenced in</p> <p>5 Indiana Code 3-11-10-25 in terms of actually</p> <p>6 marking the ballot.</p> <p>7 Q Has the Secretary of State ever considered</p> <p>8 permitting absentee by mail voters with print</p> <p>9 disabilities who vote from home to use the</p> <p>10 assistance of the person of their choice as a</p> <p>11 reasonable accommodation?</p> <p>12 A I do not believe that the office of Secretary of</p> <p>13 State has considered that. The office of the</p> <p>14 Secretary of State is, of course, required to act</p> <p>15 within the limits set by Indiana statute.</p> <p>16 Q So has the Secretary of State ever completed any</p> <p>17 analysis that would determine that it's a</p> <p>18 fundamental alteration to vote by mail to allow</p> <p>19 people to use the assistance of the person of their</p> <p>20 choice in marking their choices on the ballot?</p> <p>21 A No, I do not believe so.</p> <p>22 Q So there's no such analysis documented anywhere; is</p> <p>23 that correct?</p> <p>24 A Not to my knowledge, no.</p> <p>25 Q Are you aware of any meetings that have been had</p>	<p>Page 40</p> <p>1 administrative burden on the Secretary of State to</p> <p>2 permit absentee vote from home voters with print</p> <p>3 disabilities to use the assistance of a person of</p> <p>4 their choice to mark their choices on the ballot?</p> <p>5 A No, not to my knowledge.</p> <p>6 Q Same series of questions about that. Were there</p> <p>7 any meetings, conversations, anything in writing or</p> <p>8 e-mail around that topic that you know of?</p> <p>9 A Again, no, not to my knowledge.</p> <p>10 Q So essentially the Secretary of State has not</p> <p>11 considered the issue as far as you know; is that</p> <p>12 right?</p> <p>13 A That would be correct. Again, outside the context</p> <p>14 of obviously the current litigation.</p> <p>15 Q Same question as to an undue administrative burden.</p> <p>16 Are you aware of any analysis done about that?</p> <p>17 A No, I am not.</p> <p>18 Q So not aware of any meetings, conversations,</p> <p>19 anything in writing or e-mail?</p> <p>20 A No, I am not.</p> <p>21 Q As far as you know, they haven't considered the</p> <p>22 issue; is that right?</p> <p>23 A Again, outside the context of the current</p> <p>24 litigation, no.</p> <p>25 MS. BRANDT-YOUNG: All right. So let's mark</p>

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<p>1 another document. This will be Exhibit C. So this 2 is a file entitled fpca2013 - FVAP postcard 3 application for those who are opening the files at 4 home, so to speak.</p> <p>5 Q Sir, can you see the form through the screen share?</p> <p>6 A Yes, I can.</p> <p>7 Q And do you have a local copy open if you'd like to?</p> <p>8 A I do.</p> <p>9 Q Great. Sir, do you recognize this?</p> <p>10 A Yes, I do.</p> <p>11 Q What is it?</p> <p>12 A It is the Federal Post Card Application form 13 prescribed by the Federal Voting Assistance Program 14 of the U.S. Department of Defense with regard to 15 Voter Registration and Absentee Ballot Requests.</p> <p>16 Q And is it fair to say that this form is specific to 17 voters who fall under the Uniformed and Overseas 18 Citizens Absentee Voting Act specifically?</p> <p>19 A Yes, that's correct.</p> <p>20 Q Great. So, again, I'm going to sort of summarize 21 that program.</p> <p>22 MS. BRANDT-YOUNG: For Michele, we'll be 23 calling it the UOCAVA program, U-O-C-A-V-A. Just 24 for clarity of the transcript so everyone knows 25 what we're speaking of.</p>	<p>Page 41</p> <p>1 function that can take place entirely online at 2 indianavoters.com but that website does not permit 3 someone to submit this particular form; is that 4 correct?</p> <p>5 A That's correct.</p> <p>6 Q Thank you. In Indiana is this form made available 7 in alternate formats to anyone who asks for it, 8 like large print or braille?</p> <p>9 A I am not aware of it being made available in large 10 print or braille in Indiana.</p> <p>11 Q Does that mean you're not aware of it being made 12 generally available in advance, so to speak?</p> <p>13 MS. ABSHIRE: Objection. Vague.</p> <p>14 MS. BRANDT-YOUNG: Certainly.</p> <p>15 Q There's no Indiana-specific version of this form 16 including one in large print or braille; is that 17 right?</p> <p>18 A I believe that's correct.</p> <p>19 Q If someone asked the Secretary of State's office to 20 make this form available in large print or braille, 21 is that something that the Secretary of State's 22 office would do?</p> <p>23 A In general, with regard to election forms such as 24 voter registration forms and absentee ballot 25 applications, that duty lies outside of the</p>
<p>Page 42</p> <p>1 Q Again, I'm going to summarize some information and 2 if there's something that needs clarified please 3 tell me. Okay?</p> <p>4 A Yes, certainly.</p> <p>5 Q Great. So UOCAVA voters are qualified to be UOCAVA 6 voters by being either an overseas citizen or a 7 military or military dependent voter and they can 8 submit this application, which is a simple combined 9 application for voter registration and an absentee 10 ballot, while others would have to submit two 11 different forms in Indiana for that. They can 12 submit their ballots by e-mail and fax, while 13 others in Indiana can't. Is that correct?</p> <p>14 A Yes, that's correct.</p> <p>15 Q This particular form, as you say, is the form 16 provided by the Federal Government for use in this 17 program and it's linked to on the Indiana voting 18 website; is that correct?</p> <p>19 A Yes, I believe so.</p> <p>20 Q As of December 2020, Indiana had never developed 21 its own state-specific version of this form; 22 correct?</p> <p>23 A Yes, that's correct with regard to the 24 Voter Registration and Absentee Ballot Request.</p> <p>25 Q And currently there is a voter registration</p>	<p>Page 44</p> <p>1 Secretary of State's office. Instead that is a 2 responsibility of the Election Division, which 3 issues orders to prescribe the use of absentee 4 applications and voter registration forms.</p> <p>5 Q So if the Secretary of State received such a 6 request, they would refer it to the 7 Election Division; is that right?</p> <p>8 A I would assume that would be the course the 9 Secretary of State would follow.</p> <p>10 Q Are you aware of the Indiana Election Division ever 11 providing this form to someone in an alternate 12 format upon their request?</p> <p>13 A No, I do not believe that the Election Division has 14 done so.</p> <p>15 Q Thank you.</p> <p>16 MS. BRANDT-YOUNG: All right. Let's mark 17 another exhibit as Exhibit D.</p> <p>18 Q Do you see another file on the screen, sir?</p> <p>19 A Yes, I do. The print is a little small for me so 20 I'm relying on another laptop here, but yes, I can 21 see the page now.</p> <p>22 Q Thank you.</p> <p>23 MS. BRANDT-YOUNG: So this is, for those who 24 would like to open their own copy of the file, 25 County Summaries Marion 2012&2020.</p>

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<p>Page 45</p> <p>1 Q Please feel free to open that up, scroll through 2 it, and make sure it's a size that's legible to 3 you.</p> <p>4 A Yes, it is legible.</p> <p>5 Q Generally speaking, do you recognize the format of 6 this document?</p> <p>7 A Yes, I do. This is a page of a report specifically 8 regarding Marion County that is capable of being 9 generated by our Statewide Voter Registration 10 System's election management module.</p> <p>11 Q Can you say the name of that database again, 12 please.</p> <p>13 A The Statewide Voter Registration System election 14 management module.</p> <p>15 Q So this report came from that database; is that 16 correct?</p> <p>17 A I believe so.</p> <p>18 Q Who maintains that database?</p> <p>19 A The database is maintained by a contractor entered 20 into a relationship with the Election Division. In 21 particular, Civix is their current name. Were 22 originally contracted under the name of Quest in 23 June of 2004.</p> <p>24 Q What other information is collected in that 25 database generally?</p>	<p>Page 47</p> <p>1 Q What are the three most important things that get 2 tracked in the database that you haven't already 3 mentioned?</p> <p>4 A That is a difficult question, in that it almost 5 involves identifying who's your favorite child. 6 The database also contains information regarding 7 voting systems that are used in Indiana. The 8 system also provides lists of candidates who have 9 filed to run for office. The system with regard to 10 county users, county voter registration offices has 11 a wealth of information regarding statutory 12 requirements and standard operating procedures for 13 use of the system, whether on the voter 14 registration portion of the system or the election 15 management module portion of the system. I think 16 those would be the three that I can readily 17 identify.</p> <p>18 Q So looking at this report specifically, this is a 19 standard form of report for this database; is that 20 correct?</p> <p>21 A Yes, that's correct.</p> <p>22 Q And it tracks absentee voting by county, date, and 23 method of voting, also the type of absentee voter 24 that someone is?</p> <p>25 A Yes, that's correct. It's in a summary form, and</p>
<p>Page 46</p> <p>1 A There is a large amount of election management 2 information, ranging from election results. We 3 have links to voter turnout statistical 4 information. In addition to the specific absentee 5 records here, we have links to directories of 6 elected officials at the federal, state, and local 7 level. There are several others I could probably 8 enumerate.</p> <p>9 Q Is there voter registration information within that 10 database?</p> <p>11 A There is voter registration information within the 12 Statewide Voter Registration System, yes, with 13 regard to individual voters and with regard to 14 cumulative information regarding statewide and 15 individual county data.</p> <p>16 Q What else does this database track?</p> <p>17 A It is a comprehensive and growing database that 18 tracks, for example, compliance with UOCAVA 19 guidelines for the transmittal of approved absentee 20 ballots to voters. It tracks on the voter 21 registration side individual's voter history with 22 regard to which elections they participated in, 23 which political party primary ballots they 24 requested. Again, there are many others that I 25 could enumerate.</p>	<p>Page 48</p> <p>1 so not all categories are broken down to their most 2 granular level. For example, the 13 reasons that 3 you mentioned for qualifying for an absentee ballot 4 by mail are not broken out on this form. But yes, 5 generally that's true.</p> <p>6 Q Could the database do a report that would break out 7 the 13 different reasons?</p> <p>8 A I am not aware that the system has an existing 9 report that could do so but we have the ability in 10 working with our contractor to request customized 11 reports, and so my understanding would be that, 12 yes, we would have the ability to request a report 13 that would break out voters whose absentee ballot 14 application was approved based on one of those 15 specific reasons.</p> <p>16 Q Could you request a customized report demonstrating 17 the number of applications made by enumerated 18 reason and also the number of applications granted 19 by enumerated reason?</p> <p>20 A I believe that the system would have that 21 capability. I say that subject to receiving 22 additional advice from the experts at Civix who 23 develop software and are aware of the capacities 24 and limitations of the system, but generally the 25 system has been very flexible in providing</p>

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<p>1 customized reports of the type you mention.</p> <p>2 Q All right. So I want to draw your attention to 3 something specific in this first page, which is 4 that this is the 2012 general election and these 5 are totals for Marion County. Do you see that?</p> <p>6 A Yes, I do.</p> <p>7 Q The 2012 general election was a presidential 8 election; is that correct?</p> <p>9 A That's correct.</p> <p>10 Q Thank you. Then looking in the third column over 11 where it enumerates the methods that people used to 12 transmit their ballots, by mail, in person, by 13 traveling board, by fax, and by email, and the 14 number of people voting by fax is zero. Do you see 15 that?</p> <p>16 A I do.</p> <p>17 Q Marion County is the largest county in Indiana; 18 right?</p> <p>19 A By population, that's correct.</p> <p>20 Q Does the idea that the number of votes by fax in 21 2012 was zero seem striking?</p> <p>22 A No, it does not. In reviewing similar reports for 23 statewide for presidential elections in preparation 24 for the depositions in this matter, I was struck by 25 the small number of faxes. I believe that in a</p>	<p>Page 49</p> <p>1 Q Is there any chance that these zero fax numbers are 2 actually faxes that appeared in the county election 3 office's e-mail address and, therefore, were 4 counted as e-mails rather than faxes?</p> <p>5 A I would have no way to speculate on that.</p> <p>6 Q Can you rule it out?</p> <p>7 A I could not rule it out.</p> <p>8 Q All right. So let's stop sharing that document. 9 So we mentioned before that UOCAVA voters are 10 unique among Indiana voters in being able to 11 receive and transmit voting materials by fax and 12 e-mail; right?</p> <p>13 A Yes, that's correct.</p> <p>14 Q What technical or security requirements are in 15 place for county board of election e-mail domains 16 or servers that participate in that program?</p> <p>17 A There are no express statutory standards with 18 regard to the faxes that are used in this program. 19 Some years ago --</p> <p>20 Q Sorry, sir. I don't mean to interrupt you. My 21 question was actually about the e-mail systems.</p> <p>22 A I misunderstood. I'm sorry.</p> <p>23 Q So tell me about what technical or security 24 requirements are in place for county BOE e-mail 25 domains or servers that transmit voting-related</p>
<p>Page 50</p> <p>1 subsequent election there was also a zero fax 2 report response statewide. So the number of faxes 3 employed for voting by UOCAVA voters has been 4 almost negligible throughout the 2012 through 2020 5 period that I reviewed.</p> <p>6 Q Is it fair to say that Indiana doesn't place any 7 restrictions on the type of fax machine that you 8 can use in a UOCAVA election?</p> <p>9 A Yes, that would be correct. So long as the fax 10 machine can function, whatever model it uses would 11 not be subject to state restriction.</p> <p>12 Q Well, in fact, you can send a fax without a fax 13 machine; right?</p> <p>14 A Yes, that is my understanding.</p> <p>15 Q Sometimes faxes can be sent by copiers or via 16 online fax systems and also sort of through e-mail; 17 is that right?</p> <p>18 A Yes, my understanding is that is true. The 19 technology has evolved significantly since 2012 20 certainly. I don't pretend to be familiar with the 21 various evolutionary branches of that tree, but, 22 yes, I think that is true.</p> <p>23 Q Well, in particular, sometimes faxes can appear in 24 the recipient's e-mail; is that correct?</p> <p>25 A Yes, that's correct.</p>	<p>Page 52</p> <p>1 materials.</p> <p>2 A There are no specific Indiana statutes that 3 regulate the e-mail transmission of ballots from 4 UOCAVA voters. The effort was made some years 5 ago -- I think last two to four years -- to ensure 6 that the e-mail address used by a county was 7 clearly identified as a government address 8 recipient rather than that of a personal e-mail, 9 such as the county clerk's, but beyond that, 10 nothing that I'm aware of.</p> <p>11 Q And what technical or security measures are in 12 place for county e-mail domains or servers that 13 transmit voting information in this program?</p> <p>14 A I'm not sure I fully understand your question. 15 Would you mind giving that another go?</p> <p>16 Q Certainly. My understanding is that Indiana Code 17 Section 3-5-4-12 involves agreements to use a 18 threat intelligence and enterprise security company 19 designated by the Secretary of State. So what can 20 you tell us about how that statute impacts, if at 21 all, the security of e-mail domains and servers 22 that are used in the UOCAVA program?</p> <p>23 A The statute you reference refers to the deployment 24 of cyber safeguards throughout Indiana's counties 25 requiring counties to enter into an agreement with</p>

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<p>1 the Secretary of State which involved a vendor with 2 the designation of FireEye, which as I understand 3 is a subsidiary of Mandiant Corporation. Those 4 agreements were entered into by 85 of Indiana's 92 5 counties.</p> <p>6 A contractor with the Secretary of State and 7 Election Division, Baker Tilly who I referenced 8 earlier, examined the remaining seven counties who 9 already had vendors performing similar functions to 10 that of FireEye and advised the Secretary of State 11 and the Election Division that the safeguards in 12 place with regard to those remaining seven counties 13 were at least equivalent to that of FireEye and, 14 therefore, were acceptable in terms of complying 15 with standards that the General Assembly had 16 intended to enact pursuant to 17 Indiana Code 3-5-4-12.</p> <p>18 Q So what are the measures that are expected to be in 19 place security-wise under contracts of this type?</p> <p>20 A Generally speaking, I know that items such as 21 two-factor authentication and password encryption, 22 the use of strong passwords is a common feature, 23 but also primarily the detection of malware that 24 might be attached to an e-mail, as one example.</p> <p>25 Q So when you say two-factor authentication, is</p>	<p>1 when they are sent by the counties or when they're 2 sent by the voter in response?</p> <p>3 Q Thank you for asking. I meant when they're sent by 4 the county, so this would be blank materials sent 5 by the county to the voter.</p> <p>6 A I'm not aware of any additional safeguards beyond 7 those governing the transmittal of e-mails 8 generally that would be employed in the case of 9 transmitting election material including a ballot 10 to a UOCAVA voter.</p> <p>11 Q And what are the e-mail safeguards in place 12 generally?</p> <p>13 A I think e-mail safeguards in place generally are 14 warning messages that alert the recipient of an 15 e-mail that an e-mail is coming from an outside 16 source and to be cautious in opening an attachment 17 to an e-mail, as the primary example that comes to 18 mind.</p> <p>19 Q And then presumably in order to log into one's 20 government e-mail address every day, you have to 21 provide a password at some point in time?</p> <p>22 A Yes, of course, a strong password with a limited 23 duration of a number of days after which the user 24 is required to select a new password and use that 25 going forward.</p>
<p>1 two-factor authentication required every time 2 someone sends an e-mail or every time they sign 3 into their e-mail or use a document on the server?</p> <p>4 How is that deployed in the systems required of 5 these counties?</p> <p>6 A Not in every case in using identical methods to 7 establish two-factor authentication. To give an 8 example that might be helpful, when county users 9 are logging into the statewide voter registration 10 system to perform any number of election 11 administration or voter registration functions, 12 they are required to use tokens to establish their 13 physical presence at the system where the 14 transaction is occurring.</p> <p>15 Q What kinds of transactions would be included in 16 that?</p> <p>17 A Well, transactions could include the processing of 18 the voter registration applications, the processing 19 of absentee applications, and other functions 20 related to the voter registration list maintenance 21 and election administration.</p> <p>22 Q What about the e-mails that contain UOCAVA voting 23 materials? What security requirements are there 24 each time one of those e-mails is sent?</p> <p>25 A Can I ask you to clarify? Are you referring to</p>	<p>1 Page 54</p> <p>1 Q Any other security measures around the e-mail 2 accounts that are used to send out UOCAVA voting 3 information from the county side?</p> <p>4 A I'm not recalling anything further beyond that.</p> <p>5 Q In the December 2020 time frame when counties mail 6 out UOCAVA ballots to voters, what electronic 7 format does that ballot take?</p> <p>8 A As I would understand it, the answer would vary 9 depending upon the ballot used by each county. 10 Amongst absentee voting as we've described it for 11 purposes of this discussion, there is still 12 considerable variety between individual counties 13 based on the voting system that these absentee 14 ballots would be scanned through after their remake 15 and return. I believe that the most common example 16 might be the equivalent of a photographic 17 attachment, for example, to an e-mail that would 18 depict the voter's ballot style. And there might 19 be others of which I'm not aware that a particular 20 county may use.</p> <p>21 Q So when you say a photographic attachment, do you 22 mean a .jpeg file or a .gif file?</p> <p>23 A To the extent I'm familiar with the formats that 24 you're describing, yes, that's possible. jpgs or 25 gif files are certainly in common usage generally.</p>

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<p style="text-align: right;">Page 57</p> <p>1 Q Do any counties send them out as .pdf files?</p> <p>2 A I would imagine that some do. I have no specific</p> <p>3 knowledge regarding a county using that format to</p> <p>4 send out an absentee ballot by e-mail.</p> <p>5 Q As of December 2020, there was no requirement from</p> <p>6 the Secretary of State or any other State entity</p> <p>7 dictating the format that those UOCAVA ballots</p> <p>8 would take when e-mailed from the county board to</p> <p>9 the voter; is that right?</p> <p>10 A In general terms -- when you say format, again, I'm</p> <p>11 assuming your reference is to software as opposed</p> <p>12 to design of and content of ballot -- so yes, in</p> <p>13 that case that's true.</p> <p>14 Q Thank you. That was what I meant and I appreciate</p> <p>15 you clarifying.</p> <p>16 A Uh-huh.</p> <p>17 Q Are you aware of any county ever sending out a</p> <p>18 UOCAVA ballot in an HTML-based format?</p> <p>19 A No. I have no personal knowledge of that.</p> <p>20 MS. BRANDT-YOUNG: All right. Let's mark</p> <p>21 another document. This will be Exhibit E. It's a</p> <p>22 file entitled Cover Sheet and Affidavit for Absent</p> <p>23 Uniformed Services and Overseas Voter.</p> <p>24 Q Do you see that form on your screen, sir?</p> <p>25 A Yes, I do.</p>	<p style="text-align: right;">Page 59</p> <p>1 the county board of elections when they send in</p> <p>2 their completed ballot; is that right?</p> <p>3 A Yes, that's correct.</p> <p>4 Q I scrolled down to the bottom of this one-page form</p> <p>5 so that it would be visible on your screen and I</p> <p>6 hope that you will do the same. I'm sure you could</p> <p>7 probably replicate it with your eyes closed if</p> <p>8 necessary, but nonetheless just to make sure you</p> <p>9 can see everything that you need to see.</p> <p>10 A Yes, I can.</p> <p>11 Q Good. There are two places on this form where the</p> <p>12 voter's signature is required; correct?</p> <p>13 A Yes, that's correct.</p> <p>14 Q Does the Secretary of State's office have a</p> <p>15 position about whether this form could be split</p> <p>16 into two pages so that each signature would appear</p> <p>17 on a different page?</p> <p>18 A No, the Secretary of State's office does not have a</p> <p>19 position on that matter. I think particularly</p> <p>20 because, as noted earlier, the design and approval</p> <p>21 of forms is outside the jurisdiction of the</p> <p>22 Secretary of State but it's vested in the Indiana</p> <p>23 Election Division.</p> <p>24 Q So from the Secretary of State's position, which I</p> <p>25 understand is not a strong one as relates to</p>
<p style="text-align: right;">Page 58</p> <p>1 Q Great. And do you recognize it?</p> <p>2 A Yes, I do.</p> <p>3 Q Tell me what it is.</p> <p>4 A It is the what we refer to as the ABS-9, which is</p> <p>5 our Election Division designation for the cover</p> <p>6 sheet and affidavit for the UOCAVA voters.</p> <p>7 Q How does this form fit into the process of voting</p> <p>8 by e-mail for UOCAVA voters?</p> <p>9 A This is a statutorily-required form that must be</p> <p>10 executed by the UOCAVA voters to, first of all,</p> <p>11 provide information to properly contact the voter</p> <p>12 at the correct e-mail or address or fax number to</p> <p>13 indicate the election that the person is requesting</p> <p>14 an absentee ballot for; and then farther down the</p> <p>15 page beyond what is visible on my screen is the</p> <p>16 application by the applicant by which they swear or</p> <p>17 affirm that they are, in fact, within the</p> <p>18 definition of a UOCAVA voter; and then beyond that</p> <p>19 is the language prescribed by the Federal Voting</p> <p>20 Assistance Program with regard to qualification,</p> <p>21 citizenship, and mental capacity, which is not an</p> <p>22 Indiana law requirement; and then concluding with a</p> <p>23 voluntary waiver of secrecy that would result for</p> <p>24 this ballot if it were returned by fax or e-mail.</p> <p>25 Q So to summarize, this gets returned by the voter to</p>	<p style="text-align: right;">Page 60</p> <p>1 standard statewide forms, is there anything that</p> <p>2 would prevent the Indiana Election Division from</p> <p>3 splitting the form into two pages and instructing</p> <p>4 county boards of elections to accept a signature</p> <p>5 anywhere on each of the two pages of this form?</p> <p>6 A I think that's a two-part question. I'll try to</p> <p>7 address that. The first part, no, generally there</p> <p>8 is not any restriction that would prevent the</p> <p>9 Election Division from acting in the manner you've</p> <p>10 described. We are, like all state agencies,</p> <p>11 required to have our forms approved by a separate</p> <p>12 agency, the department of forms management, which</p> <p>13 is part of the larger public records office. And</p> <p>14 with regard to the second part of the question,</p> <p>15 which I really take to be a legal one, with regard</p> <p>16 to whether the signature could be placed at any</p> <p>17 location on the form, no, the Secretary of State's</p> <p>18 office has taken no position on that and so I don't</p> <p>19 know that I could be responsive on that point.</p> <p>20 Q Does the Secretary of State's office believe that</p> <p>21 anything prevents the Election Division from</p> <p>22 instructing the counties that as to voters with</p> <p>23 print disabilities they should permit the voter to</p> <p>24 sign anywhere on each page of a two-page form?</p> <p>25 A I'm not aware of any such restriction on the</p>

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<p>1 Secretary of State's office.</p> <p>2 Q All right. Let's stop sharing that document. Is</p> <p>3 it fair to say that the Secretary of State's office</p> <p>4 regularly communicates with Indiana voters about</p> <p>5 voting-related topics?</p> <p>6 A Yes, that is certainly true.</p> <p>7 Q What methods of communication does the Secretary of</p> <p>8 State's office use when communicating with voters?</p> <p>9 A The Secretary of State's office has used a wide</p> <p>10 variety of communication methods in doing so. The</p> <p>11 Election Division maintains a website that is</p> <p>12 incorporated into the Secretary of State's website.</p> <p>13 The Secretary of State on the pages that are</p> <p>14 directly related to the functions of that office</p> <p>15 contains various links to other websites and</p> <p>16 general information, including press releases with</p> <p>17 regard to upcoming deadlines for voter registration</p> <p>18 or absentee ballot applications.</p> <p>19 The Secretary of State has also communicated</p> <p>20 in the past extensively with Indiana voters during</p> <p>21 2020 as part of expenditures made under the</p> <p>22 CARES Act to alert Indiana voters to significant</p> <p>23 changes. To give an example, Indiana's primary</p> <p>24 since 1940 has always been conducted on the first</p> <p>25 Tuesday after the first Monday in May, and so when</p>	<p>Page 61</p> <p>1 voter list maintenance purposes or, again, in</p> <p>2 response to individual requests for specific</p> <p>3 documents related to voter registration or absentee</p> <p>4 voting.</p> <p>5 Q Does the Secretary of State's office have a policy</p> <p>6 or a procedure about what to do if it receives a</p> <p>7 request for communication in an alternate format,</p> <p>8 like large print or braille?</p> <p>9 A I am not aware of a specific policy that the office</p> <p>10 of the Secretary of State would have in that</p> <p>11 regard. I would speculate that the Secretary of</p> <p>12 State's office attempts to be as responsive as</p> <p>13 possible given the particular nature of the</p> <p>14 document requested and by whom.</p> <p>15 Q Are you aware of any instructions on their website</p> <p>16 explaining to voters with disabilities how to</p> <p>17 request materials in alternate formats?</p> <p>18 A I cannot recall any language on the Secretary of</p> <p>19 State's website in that regard.</p> <p>20 Q Are you aware of any guidance or policy that the</p> <p>21 Secretary of State has issued at all explaining to</p> <p>22 voters how to communicate with the Secretary of</p> <p>23 State's office and a way that they can get</p> <p>24 alternate formats?</p> <p>25 A I am not aware of any specific communications in</p>
<p>Page 62</p> <p>1 the primary was conducted instead on that same day</p> <p>2 in June of 2020 there was considerable outreach by</p> <p>3 radio and public service ads and other methods to</p> <p>4 inform voters of the change and to address concerns</p> <p>5 that voters might have with regard to their</p> <p>6 personal safety or the safety of poll workers. So</p> <p>7 all of those methods are used.</p> <p>8 The Election Division primarily publishes the</p> <p>9 detailed manuals for administrators, but the</p> <p>10 Secretary of State's office, again, through the</p> <p>11 methods I've already identified, publicizes</p> <p>12 highlights that are important to the voting public</p> <p>13 generally regarding the election process.</p> <p>14 Q So fair to say that some of the Secretary of</p> <p>15 State's communications occur over the web. Does</p> <p>16 the Secretary of State ever mail things to voters,</p> <p>17 either on its own initiative or on request?</p> <p>18 A I am sure the Secretary of State does. In the</p> <p>19 routine course of business, if an individual were</p> <p>20 to correspond in writing or in e-mail with the</p> <p>21 Secretary of State's office, I'm certain that they</p> <p>22 would be referred to a website or would receive a</p> <p>23 mailing containing an application form that they</p> <p>24 might request. Generally speaking, most mailings</p> <p>25 by volume occur through the Election Division for</p>	<p>Page 64</p> <p>1 that regard.</p> <p>2 Q Does the Secretary of State's office have any</p> <p>3 opinions about issuing guidelines or a policy like</p> <p>4 that? Would it be helpful or unhelpful?</p> <p>5 A No, I'm not aware that the Secretary of State's</p> <p>6 office has an opinion regarding that particular</p> <p>7 matter. I would say generally the office views</p> <p>8 itself as being there to serve the public as best</p> <p>9 it can with the resources available, but no with</p> <p>10 regard to your specific question.</p> <p>11 Q Has the Secretary of State ever made a formal</p> <p>12 determination that providing communications in</p> <p>13 alternate formats would constitute a fundamental</p> <p>14 alteration in its program?</p> <p>15 A No.</p> <p>16 Q This is a question that I have asked you before,</p> <p>17 and so I'm going to summarize it unless you tell me</p> <p>18 not to. Are you aware of any formal written</p> <p>19 determinations around that, meetings,</p> <p>20 conversations, e-mails on that topic?</p> <p>21 A No, I am not.</p> <p>22 Q So as far as you know, they've never considered the</p> <p>23 issue?</p> <p>24 A Yes, that's correct. So far as I know, they have</p> <p>25 not.</p>

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<p style="text-align: right;">Page 65</p> <p>1 Q Same question as to whether the Secretary of State 2 has ever made a formal determination that providing 3 communications in alternate formats would be an 4 undue administrative burden to it?</p> <p>5 A No, I'm not aware of that.</p> <p>6 Q Again, same summary question. Have they made a 7 formal written determination, have they had 8 meetings, conversations either orally or in e-mail 9 or any other method that you know of?</p> <p>10 A Likewise no in that regard. Not to my knowledge.</p> <p>11 Q So as far as you know, they haven't considered the 12 issue?</p> <p>13 A That is correct.</p> <p>14 Q Same question about providing communications in 15 alternate formats, whether that would be an undue 16 financial burden to the Secretary of State? Are 17 you aware of such a determination?</p> <p>18 A No, no such determination that I'm aware of.</p> <p>19 Q Are you aware of any meetings, conversations, 20 e-mails, anything like that, on that topic?</p> <p>21 A No. Again, subject to the context of the pending 22 litigation, no.</p> <p>23 Q So as far as you know, they haven't considered the 24 issue?</p> <p>25 A That is correct.</p>	<p style="text-align: right;">Page 67</p> <p>1 customization. Beyond that, would vary 2 significantly depending, again, upon the scope and 3 the complexity. It might range more in the 4 neighborhood of a week or ten days to develop a 5 proper coding and generate the report and make 6 certain it is, in fact, what the requester has 7 asked for.</p> <p>8 Q So fair to say that the inside bound is a day and 9 the outside bound is ten days?</p> <p>10 A I think that's a fair estimate.</p> <p>11 Q Thank you. All right. Let's go back to Exhibit B, 12 our 30(b)(6) notice, for a moment.</p> <p>13 Can you see Topic 3 on your screen, sir?</p> <p>14 A Yes, I can. I'm going to have a little larger 15 version provided in a moment.</p> <p>16 Q Let me know when you're ready.</p> <p>17 A Okay. Yes, I'm ready.</p> <p>18 Q Thank you. So Topic 3 is, All research, studies, 19 planning, and actions taken and planned for 20 compliance with the provisions of Senate Enrolled 21 Act 398 of 2021 as it relates to voters with print 22 disabilities, including but not limited to: 23 All policies and procedures that Defendant is 24 developing and is obligated to follow regarding the 25 procurement of accessible information technology</p>
<p style="text-align: right;">Page 66</p> <p>1 MS. BRANDT-YOUNG: All right. We've been 2 going for a little while and I would like to 3 propose a five-minute break for everybody to go get 4 a glass of water. Does anyone object?</p> <p>5 THE WITNESS: No, certainly.</p> <p>6 MS. BRANDT-YOUNG: Thank you. It's 11:42 and 7 we'll see you at 11:47 or thereabouts. Is that 8 good?</p> <p>9 THE WITNESS: Very good. Thank you.</p> <p>10 MS. BRANDT-YOUNG: Thank you.</p> <p>11 MS. ABSHIRE: Thank you.</p> <p>12 (A brief recess was taken.)</p> <p>13 Q So we're back on the record. Sir, I had a question 14 for you about the database and custom reports from 15 it. How long does it typically take for Civix to 16 provide a custom report when one is requested?</p> <p>17 A That will depend upon the complexity of the report 18 and whether or not it or a similar report has been 19 previously requested. If it's essentially a 20 request for an updated version of a report that's 21 already been customized and developed, then the 22 turnaround time would likely be within one to two 23 business days.</p> <p>24 It assumes that less than five hours of expert 25 time would be required to develop the</p>	<p style="text-align: right;">Page 68</p> <p>1 products and services; all policies and procedures 2 that Defendant has developed or is obligated to 3 follow regarding making and maintaining any 4 information technology products and services in an 5 accessible state; and any anticipated challenges to 6 complying with SEA 398, including any security 7 concerns and any alleged fundamental alterations.</p> <p>8 Do you see that, sir?</p> <p>9 A Yes, I do.</p> <p>10 Q Who at the Secretary of State is the most 11 knowledgeable person about this topic?</p> <p>12 A In terms of the Secretary of State's office, I'd, 13 again, identify Jerry Bonnet and Jay Phelps as the 14 individuals most familiar with the items listed 15 here in No. 3.</p> <p>16 Q But you're prepared to discuss it for the 17 Secretary of State today?</p> <p>18 A Yes, I am.</p> <p>19 Q So as of yet, SEA 398 has not been put into effect 20 in any election that's been held in the state of 21 Indiana; is that right?</p> <p>22 A That's correct.</p> <p>23 Q And SEA 398 makes certain provisions for voters 24 with print disabilities that are the subject of 25 this case; right?</p>

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<p>1 A That's correct.</p> <p>2 Q A voter with print disabilities is defined in the 3 Indiana Code 3-5-2-50.3 as, quote, an individual 4 who is unable to independently mark a paper ballot 5 or ballot card due to blindness, low vision, or a 6 physical disability that impairs manual dexterity. 7 Is that correct?</p> <p>8 A Yes, that's correct.</p> <p>9 Q So if a voter with dyslexia cannot independently 10 read and mark a paper ballot because of their 11 disability, they're not listed here as being 12 included within the statute; is that correct?</p> <p>13 A I would hesitate to offer a construction of the 14 statute. Again, low vision is something that I 15 generally understand as a layperson but certainly 16 do not have a medical background that allows me to 17 state its breadth, but in my view, an individual 18 whose visual capabilities are impaired by dyslexia 19 would fall within this definition.</p> <p>20 Q Fair to say that dyslexia and visual processing 21 disorders do not appear on the face of the statute?</p> <p>22 A That's correct.</p> <p>23 Q What advice or outreach is either the Secretary of 24 State's office or the Indiana Election Division 25 performing in order to better understand and guide</p>	<p>Page 69</p> <p>1 about the application of the statute in individual 2 cases.</p> <p>3 Q Has either the Secretary of State or the Indiana 4 Election Division consulted with a medical or 5 rehabilitative expert about whether voters with 6 dyslexia fall within the definition included in 7 3-5-2-50.3?</p> <p>8 A I am not aware that either the Secretary of State 9 or the Indiana Election Division has consulted with 10 medical professionals on that topic. I do know 11 that the Secretary of State has consulted with 12 Bosma Enterprises with regard to the aspects of the 13 development of a ballot for voters with print 14 disabilities, but whether that included specific 15 discussions regarding dyslexia I don't have any 16 direct knowledge.</p> <p>17 Q Does the Secretary of State or the Indiana Election 18 Division have any current plans to instruct 19 counties on how to deal with voters with dyslexia?</p> <p>20 A Not that I am specifically aware of.</p> <p>21 Q Why not?</p> <p>22 A I think in part, again, because of the context of 23 litigation that we want to make sure that the 24 information that we do provide to counties is both 25 accurate and not subject to change that would</p>
<p>1 the counties on who falls within the definition of 2 a voter with a print disability?</p> <p>3 A The Indiana Election Division and, of course, the 4 Secretary of State to a lesser degree provided 5 information regarding the enactment of 6 Senate Enrolled Act 398 in which this definition 7 was included and addressed the development of 8 system features to accommodate voters with print 9 disabilities at its recent conference of county 10 election officials that was attended by, either 11 virtually or in person, almost 450 individuals from 12 all 92 counties. So the outreach has begun but is 13 necessarily constrained because some of the issues, 14 such as the question you've raised, in the context 15 of this litigation have not been definitively 16 addressed.</p> <p>17 I think the Secretary of State's office is 18 exercising prudence and caution in avoiding making 19 too detailed of a presentation before issues are 20 resolved. If you will indulge me with the 21 colloquial proverb that I often use is it's very 22 messy to paint the airplane while you're flying it. 23 So I think that somewhat tempers the ability of the 24 Election Division and the Secretary of State to 25 convey extremely detailed and precise definitions</p>	<p>Page 70</p> <p>1 result in confusion for both the voters and the 2 counties.</p> <p>3 Q Other than the litigation, is there any other 4 reason why the Secretary of State or the 5 Election Division has not informed the counties of 6 whether voters with dyslexia may apply or receive 7 an absentee ballot under this provision?</p> <p>8 A No, none that I'm aware.</p> <p>9 Q Why does the litigation prevent the Secretary of 10 State or the Indiana Election Division from 11 providing that guidance?</p> <p>12 A I do not know that the litigation legally or 13 ethically bars the defendants in this case from 14 communicating that information, but I repeat my 15 answer with regard to the reliance that counties 16 place on both the Election Division and the 17 Secretary of State to receive accurate and 18 definitive guidance with regard to the 19 administration of election law and that as a result 20 when issues are unsettled and ambiguities exist, 21 such as a gap in Senate Bill 398 with regard to a 22 deadline for an individual requesting a ballot by 23 e-mail to respond, we've had to acknowledge the 24 fact that that uncertainty exists until the 25 General Assembly addresses it and so we cannot</p>

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<p>1 respond with our speculation about what the result 2 might be.</p> <p>3 Q So the fact that it's an omission on the face of 4 the statute is also a reason why you haven't issued 5 any guidance about this issue. Is that fair to 6 say?</p> <p>7 A I think that would be fair to say, yes.</p> <p>8 Q Are there ever issues that the counties need 9 guidance about that the Election Division or 10 Secretary of State currently feels constrained not 11 to instruct them about because of the pending 12 litigation?</p> <p>13 A I would think generally speaking because of the 14 litigation the precise coverage of the voters with 15 print disabilities and any other methods beyond 16 what's specified in the Secretary of State's order 17 of September the 27th of this year are ones that 18 the Secretary of State and Election Division are 19 hesitant to address for the reasons I've described.</p> <p>20 Q So in regard to the precise coverage of voters with 21 print disabilities in the statute, are you aware of 22 any request of or effort by the General Assembly to 23 address that legislative omission in the 2022 24 session?</p> <p>25 A I think I understand, but let me ask it. You're</p>	<p>Page 73</p> <p>1 it in the session that will begin in January and is 2 scheduled to conclude no later than March 3 the 14th.</p> <p>4 Q What prompts you to say that they may very well 5 address it in the next legislative session?</p> <p>6 A Because we have called attention to it to the 7 450-some county election administrators who were 8 present and were concerned with regard to its 9 absence, although it did not have any practical 10 effect that I'm aware of with regard to two special 11 elections that were conducted in small school 12 corporations in November of 2021.</p> <p>13 Q So is it that the Election Division or Secretary of 14 State has called this to the attention of the 15 General Assembly? Is that why we think that it may 16 be addressed in the next session?</p> <p>17 A That I think is a fair conclusion to draw, in that 18 certainly many of the attendees of our conference 19 are in communication with their State Senators and 20 State Representatives and would be likely to convey 21 that information to them.</p> <p>22 Q So fair to say that the reason that it may be 23 addressed in the next legislative session is 24 because you believe that it's likely that a county 25 board of elections will bring it to the attention</p>
<p>Page 74</p> <p>1 referring to the definition in 3-5-2-50.3?</p> <p>2 Q Yes, please.</p> <p>3 A No, I'm not aware of any efforts undertaken by any 4 individual to address that particular question 5 through the General Assembly.</p> <p>6 Q And as to the other omission that you mentioned, 7 the lack of a deadline -- and tell me if I've got 8 this right -- for return of e-mail ballots pursuant 9 to the section, is that the other omission that you 10 mentioned?</p> <p>11 A No. Actually it's related but not exactly that. 12 It's the deadline for the application to be 13 received --</p> <p>14 Q I see.</p> <p>15 A -- when the voter is requesting an e-mailed or 16 faxed ballot was not addressed when the 17 General Assembly enacted Senate Enrolled Act 398. 18 It failed to amend Indiana Code 3-11-4-3, which is 19 a statute which generally sets forth the deadlines 20 for applications for absentee ballots to be 21 received.</p> <p>22 When I say we, I'm referring to the 23 Election Division. We referred to that matter 24 specifically at our recent conference and noted 25 that the General Assembly might very well address</p>	<p>Page 76</p> <p>1 of the legislature. Do I have that right?</p> <p>2 A I would amend it slightly to say the circuit court 3 clerks association has a presence at the 4 General Assembly and generally has an arrangement 5 with a legislator in either chamber to introduce a 6 bill that addresses concerns of clerks generally 7 and that certainly election law items have been 8 included in bills put forward by the association of 9 circuit court clerks.</p> <p>10 Q I'm sorry to ask you to repeat yourself. You said 11 before that in providing guidance to the county 12 boards and circuit court clerks that in an effort 13 to avoid providing information which would later 14 turn out to be incorrect or contradicted the 15 Indiana Election Division and/or Secretary of State 16 is trying to be vague about the application of the 17 statute with the litigation pending. Aside from 18 the issue of the precise coverage of voters with 19 print disabilities, are there any other issues that 20 the agencies feel they have to be vague about 21 because of the litigation?</p> <p>22 A I would respectfully dispute your use of the word 23 vague. It's not the intention of either the 24 Secretary of State's office or the 25 Election Division to be vague or ambiguous in any</p>

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<p style="text-align: right;">Page 77</p> <p>1 way, but to let the law speak for itself and to say 2 what it clearly says, with the understanding that 3 there may be ambiguities or omissions of the sort 4 we've already addressed that will be further 5 clarified by the General Assembly in 2022 or 6 subsequently.</p> <p>7 Q So is there any other area in which the 8 Secretary of State or Indiana Election Division is 9 withholding some aspect of guidance because of the 10 litigation?</p> <p>11 A I would say not with regard to the content of the 12 requirements in Senate Bill 398. That's where we 13 as one of the first actions that the 14 Election Division I'm referring to now undertakes 15 following each legislative session is to prepare a 16 detailed legislative summary that we also published 17 as part of our paperback election code that was 18 distributed at the conference and is available 19 online going back I believe to 2002 or thereabouts, 20 and so we make every effort to convey information 21 regarding enactments by the General Assembly as 22 soon as possible.</p> <p>23 Q So the Indiana Code Section 3-11-4-6 sets out the 24 procedure for the UOCAVA voting system that we 25 discussed previously; is that right?</p>	<p style="text-align: right;">Page 79</p> <p>1 subsequent upgrades to those standards to a 2 version 2.2 that, again, the General Assembly would 3 have to address to incorporate those particular 4 additional standards.</p> <p>5 Q Is it fair to say that the purpose of that 6 particular subsection, subsection (k), is to enable 7 voters with print disabilities to vote via e-mail 8 in the same way that UOCAVA voters do?</p> <p>9 A Yes, I think that's generally true.</p> <p>10 Q And the purpose of putting the Web Content 11 Accessibility Guidelines in there is to have that 12 system be accessible to people with print disabilities 13 with assistive technology that they already use; is 14 that right?</p> <p>15 A Yes, that's correct.</p> <p>16 Q So they can vote privately and independently 17 absentee by mail as HAVA requires; is that right?</p> <p>18 A Yes, that's correct.</p> <p>19 Q Is it fair to say that the UOCAVA system as it 20 existed in December 2020 was not previously 21 compliant with WCAG?</p> <p>22 A I would note that with regard to the portions of 23 WCAG, as I call it, the website maintained by the 24 Secretary of State had been accorded a AAA rating 25 with regard to compliance with the WCAG standards,</p>
<p style="text-align: right;">Page 78</p> <p>1 A Yes, that's correct.</p> <p>2 Q And subsection (k) of that statute is the last 3 section; is that right?</p> <p>4 A Yes, last subsection, that's correct.</p> <p>5 Q It reads, The secretary of state, with the approval 6 of the election division, shall develop a system 7 that complies with the Web Content Guidelines. Is 8 that right?</p> <p>9 A Yes, that's correct.</p> <p>10 Q What does with the approval of the 11 Election Division mean?</p> <p>12 A That means the Election Division speaking as an 13 entity, which means myself and my counterpart as 14 co-directors agreeing to act on behalf of the 15 office, which under Indiana law is a requirement 16 under the holding in Sammons v. Conrad, an Indiana 17 Supreme Court case from 2000, that the Secretary of 18 State's duties in acting under subsection (k) are 19 subject to the approval of the office as a whole in 20 its bipartisan characteristic.</p> <p>21 Q What does shall develop a system that complies with 22 the Web Content Guidelines mean?</p> <p>23 A The Web Content Guidelines make reference to the 24 WCAG standards 2.1 as they're incorporated in 25 3-5-2, with the understanding that there may be</p>	<p style="text-align: right;">Page 80</p> <p>1 which in my understanding focus particularly on the 2 color contrast being at a level of 7.0 or higher, 3 and so to that extent certainly the UOCAVA portion 4 of the SOS or Election Division website did comply 5 with WCAG in December of 2020.</p> <p>6 Q So is it fair to say that the FVAP postcard 7 application, which we previously saw as Exhibit C, 8 and the ABS-9 form that we previously saw as 9 Exhibit E are part of the UOCAVA voting system?</p> <p>10 A I think it is fair to say that with this 11 distinction. That is, the ABS-9 is developed, as I 12 mentioned, by Indiana, although it must use 13 federally-prescribed language, but it also has 14 features such as fillable fields that are not 15 available on the form prescribed by the 16 Federal Government through FVAP. So in that case 17 the Indiana form certainly complies in ways that 18 the FPCA does not, to my understanding.</p> <p>19 Q So both the FVAP form and the ABS-9 form are 20 available on websites that are either run by the 21 SOS or linked to by the SOS; is that right?</p> <p>22 A Yes, that's correct.</p> <p>23 Q And in December 2020 did anyone check the FVAP 24 postcard application or the ABS-9 form to see if it 25 complied with WCAG?</p>

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<p style="text-align: right;">Page 81</p> <p>1 A I am not familiar with specifically checking the 2 two forms you indicated. I do know that on or 3 perhaps after December 2020 Baker Tilly, one of the 4 contractors we employ as a program manager, engaged 5 the services of a firm known by the acronym SPR to 6 review the web pages maintained as part of this 7 program by the Secretary of State and 8 Election Division and made determinations that the 9 website clearly already met AA standards and I 10 believe there was one small technical aspect that I 11 don't recall the details of as we speak that was 12 remedied and allowed us to achieve the AAA status.</p> <p>13 Q In the interests of a clear record, you and I have 14 both spoken about the Web Content Accessibility 15 Guidelines and you've mentioned that WCAG involves 16 screen contrast standards measured on a numerical 17 scale, that version 2.1 is the operative version 18 right now, and you're expecting that the statute 19 requires compliance with the AAA level of WCAG. Is 20 that right?</p> <p>21 A Yes. I would say that the statute does not 22 specifically reference the AAA level, but to my 23 understanding, that's correct.</p> <p>24 Q Okay. What's the purpose of WCAG?</p> <p>25 A I think the purpose of WCAG is to ensure that a</p>	<p style="text-align: right;">Page 83</p> <p>1 A I assume that to be true, yes.</p> <p>2 Q So we've been talking about these forms, in 3 particular Exhibits C and E, the FVAP application 4 and the ABS-9 form. You can view and read those on 5 a website; right?</p> <p>6 A Yes, you can.</p> <p>7 Q You can also download them from a website or an 8 e-mail program and work with them outside the 9 context of a website, for instance, in 10 Adobe Acrobat you can fill out those forms; right?</p> <p>11 A Yes, I would assume so. My knowledge of 12 Adobe Acrobat is not that of a technician, but yes, 13 that's my understanding.</p> <p>14 Q And do the Web Content Accessibility Guidelines 15 apply to documents even when they're not appearing 16 specifically on a website?</p> <p>17 A I don't believe I know the answer to that question. 18 I think I would need to have some more specific 19 information available to understand exactly the 20 context that your question refers to. My 21 understanding is that the standards are generally 22 designed for use on websites, and what might be 23 beyond that is something I'm not familiar with.</p> <p>24 Q Well, so is it fair to say that if the Secretary of 25 State or Indiana Election Division provides the</p>
<p style="text-align: right;">Page 82</p> <p>1 person with vision disabilities in particular has 2 the ability to navigate across web pages and 3 perform transactions on the web without 4 encountering difficulties that a person with a 5 normal level of sight would be able to do.</p> <p>6 Q Fair to say that the WCAG standards also apply to 7 other types of assistive technology that one might 8 use in order to use a computer? Blind people use 9 screen readers that read out the content that's on 10 the computer, for instance, and then people with 11 low vision might use a screen magnifier to make 12 things appear larger and then people with manual 13 dexterity disabilities, for instance, might use a 14 program that enables you to control your computer 15 by speaking to it. Right?</p> <p>16 A Yes. I believe that all of those are correct, yes.</p> <p>17 Q And by following the Web Content Accessibility 18 Guidelines, designers of electronic information 19 make it accessible to people who use those types of 20 assistive technologies; right?</p> <p>21 A Yes, that's my understanding.</p> <p>22 Q And, in fact, people who use those assistive 23 technologies use them to use their computers, 24 anything that a computer might do not limited to 25 websites; right?</p>	<p style="text-align: right;">Page 84</p> <p>1 ABS-9 form to the general public so that people who 2 are considering using the UOCAVA voting system, if 3 they just want to see the form and see what is it 4 is that they're being asked to sign on to, does 5 that form when provided on the website for general 6 information have to comply with WCAG?</p> <p>7 A I believe it does comply with WCAG based on the 8 information that I've received from our contractor 9 in the performance of their work in attaining the 10 AAA rating. I can't independently confirm that it, 11 in fact, does so.</p> <p>12 Q If a county board of elections then takes that form 13 and sends it out to a UOCAVA voter in an e-mail 14 pursuant to the UOCAVA voting program, under 15 subsection (k) of our statute, 3-11-4-6, if the 16 form is attached to an e-mail, does it still have 17 to comply with WCAG?</p> <p>18 A I would assume so, yes.</p> <p>19 Q Is it fair to say that anything being attached to 20 an e-mail pursuant to the UOCAVA program that a 21 voter is expected to read has to be compliant with 22 WCAG?</p> <p>23 A Understanding your question to be something that's 24 a required component under the applicable statutes 25 for the voter, then yes, I believe so.</p>

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<p>1 Q What training is the Secretary of State or Indiana 2 Election Division providing to its staff internally 3 to ensure that electronic communications in the 4 UOCAVA program are WCAG compliant?</p> <p>5 A I'm not aware of any training being provided to 6 Secretary of State staff or Election Division staff 7 on that topic.</p> <p>8 Q Fair to say that making the UOCAVA program WCAG 9 compliant will require some specialized expertise 10 around WCAG?</p> <p>11 A I would expect that it would require specialized 12 knowledge, which is reflected in the fact, again, 13 that we asked our contractor to hire SPR to ensure 14 that the detailed standards in WCAG were met, so 15 yes.</p> <p>16 Q And when you say you asked your contractor, that 17 contractor is Baker Tilly?</p> <p>18 A Yes, I was referring to Baker Tilly.</p> <p>19 Q Okay. What are the different services that SPR 20 will provide around WCAG compliance?</p> <p>21 A I do not have a detailed understanding of those 22 services to the extent they involve technology 23 beyond my expertise, but, again, I assume that they 24 would ensure that the components used in the system 25 by the voter and by the counties would meet the</p>	<p>Page 85</p> <p>1 but it is a contract that was entered into by the 2 State and so, therefore, is potentially accessible.</p> <p>3 Q Is this the contract with Baker Tilly or with SPR?</p> <p>4 A I'm referring to the amendment. We have no direct 5 contractual relationship with SPR at the State 6 level. Instead it's an amendment to one of our 7 existing vendor contracts. As I said, I identify 8 that vendor as Baker Tilly.</p> <p>9 Q All right. I believe we may look at that contract 10 later today. So I'm making a note to come back to 11 this.</p> <p>12 MS. ABSHIRE: Christina, while you're paused, 13 what are you thinking in terms of time to break for 14 a lunch break?</p> <p>15 MS. BRANDT-YOUNG: Good question. Give me a 16 second.</p> <p>17 (Attorney reviewing notes)</p> <p>18 MS. BRANDT-YOUNG: I was hoping to go on until 19 1:00 today.</p> <p>20 MS. ABSHIRE: Is that okay with you?</p> <p>21 THE WITNESS: Yes. I'm fine with continuing 22 to 1:00.</p> <p>23 MS. ABSHIRE: I'm also fine with that.</p> <p>24 MS. BRANDT-YOUNG: Thank you, Courtney.</p> <p>25 All right. So in that case let's mark another</p>
<p>1 applicable standards under WCAG so that the voter 2 would be enabled to, through any of the methods 3 that you enumerated in your previous question, 4 whether that's audio or screen reader or some other 5 adaptive technology, to be able to independently 6 complete and return the ballot and related election 7 material.</p> <p>8 Q So what are the products and/or services that SPR 9 will provide in order to ensure that the materials 10 used in the UOCAVA voting program are WCAG 11 compliant? Are they producing guidelines? Are 12 they analyzing websites or documents? What are the 13 vectors by which they're going to do that?</p> <p>14 A As I recall, my review of the contract amendment 15 that employed SPR for approximately \$62,000, it 16 provided for just general analysis with regard to 17 the effectiveness of the features and being able to 18 perform the function we're discussing here. I 19 don't recall any specific details in addition to 20 that without refreshing my memory.</p> <p>21 Q Is there a document that would help you do that?</p> <p>22 A There is a contract amendment that I reference that 23 I think might be helpful in doing that.</p> <p>24 Q Do you have it with you today?</p> <p>25 A I do not personally have it available to me today,</p>	<p>Page 86</p> <p>1 document. So we're marking as Exhibit F a document 2 called ACBI1055-1082 Baker Tilly Contract 2019.</p> <p>3 Q Sir, do you see a document through the screen 4 share?</p> <p>5 A Yes, I do. Again, the print is a little small for 6 me, so if you'll . . .</p> <p>7 (Attorney zooming in on screen)</p> <p>8 A I now am able to view it effectively, yes. Thank 9 you.</p> <p>10 Q Great. If you'd like to open a local copy on a 11 laptop where that's the only document you can see 12 to facilitate scrolling through and looking for 13 things, please feel free.</p> <p>14 A I have done so. Thank you.</p> <p>15 Q All right. So do you recognize this?</p> <p>16 A Yes. This appears to be the contract that was 17 entered into between the Secretary of State and 18 Baker Tilly Virchow Krause, LLP, which we 19 ordinarily designate by its shorthand of 20 Baker Tilly, for the period from May 1, 2019, 21 through December 31, 2019.</p> <p>22 Q So this contract is between the Secretary of State 23 and Baker Tilly. Did the Election Division have 24 any role in it?</p> <p>25 A I do not recall any role by the Election Division</p>

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<p>1 other than the Election Division was aware of this 2 contract but I don't recall if the 3 Election Division was a signatory. I'd have to 4 review the contract to confirm that.</p> <p>5 Q And looking at the first page of this contract, 6 this contract was supposed to be completed in 2019; 7 is that right?</p> <p>8 A Yes. The services were to be provided during the 9 contract term, which ended on December 31, 2019.</p> <p>10 Q Thank you. So let's skip to .pdf page 19. Let me 11 know when you're there and if you can just sort of 12 scroll through this page.</p> <p>13 A I am there and I believe I'm able to scroll 14 through.</p> <p>15 Q Wonderful. So is it fair to say that this page 16 lists the services to be provided under this 17 contract?</p> <p>18 A Yes, I believe so.</p> <p>19 Q What are those services?</p> <p>20 A They're enumerated on page 19, as you've pulled it 21 up. The first activity is designing and 22 establishing governance for cybersecurity with 23 regard to having a model for roles and 24 responsibilities for the Secretary of State in the 25 cybersecurity program.</p>	<p>Page 89</p> <p>1 Q So looking at that last topic at the left at the 2 bottom of the page, to review the existing HAVA 3 election cyber appropriations budget, that's the 4 Help America Vote Act budget; right?</p> <p>5 A That's correct.</p> <p>6 Q Were appropriations being made in the 2019 period 7 under the Help America Vote Act around 8 cybersecurity?</p> <p>9 A Yes. I hesitate only because of the difference 10 between federal and state fiscal years, but there 11 were election security funding made available from 12 the U.S. Election Assistance Commission in I 13 believe 2018 and 2020 in the amount of 14 approximately \$8 million for each of those two for 15 a total of \$16 million from that particular source.</p> <p>16 Q So to be clear, did Indiana receive any of that 17 funding?</p> <p>18 A Yes, Indiana did receive the funding that I've 19 referred to.</p> <p>20 Q So about \$8 million in each of two years?</p> <p>21 A Each of the two federal fiscal years I referenced, 22 yes.</p> <p>23 Q Great. So looking at the services here, do any of 24 them have particularly to do with voters with 25 disabilities?</p>
<p>Page 90</p> <p>1 It also references facilitating a survey of 2 county information technology offices in all 92 3 counties particularly with regard to the use of 4 Albert sensors. Then if I can scroll a little bit. 5 (Attorney scrolling on screen)</p> <p>6 A And then to cooperate with Indiana University to 7 conduct high-level assessment capabilities and make 8 recommendations to the State regarding the 9 interviews in cooperation with Indiana University.</p> <p>10 It goes on to reference conducting capability 11 assessments for VSTOP, which is the Voting System 12 Technical Oversight Program established by 13 Indiana Code 3-11-16, to determine opportunities 14 for collaborating with the individuals at VSTOP, 15 which is a program administered by Ball State 16 University, with regard to the certification 17 process for both electronic poll books and voting 18 systems.</p> <p>19 And then finally developing a long-term 20 strategy with regard to cybersecurity projects and 21 reviewing existing appropriations made by the 22 General Assembly and asking the State to revise its 23 budget to include new Cybersecurity Management 24 Office projects into the existing budgetary 25 appropriation.</p>	<p>Page 92</p> <p>1 A Could I scroll up, please.</p> <p>2 Q Please.</p> <p>3 (Witness reviewing laptop)</p> <p>4 A No, I do not see any of the activities listed that 5 have specific reference to voters with 6 disabilities.</p> <p>7 Q So it's a cybersecurity contract?</p> <p>8 A Yes.</p> <p>9 Q Okay. How did the Secretary of State select 10 Baker Tilly as the vendor?</p> <p>11 A Baker Tilly has had a contractual relationship with 12 both the Secretary of State and Election Division 13 since October of 2003 and so it has had a 14 long-standing and, in my opinion, very satisfactory 15 relationship with Baker Tilly in providing a wide 16 range of services to the State, and so that I 17 believe was the principal factor of experience and 18 confidence in working with a particular vendor.</p> <p>19 Q Do they have any particular expertise in voting?</p> <p>20 A I would say yes based on their experience with the 21 development of the Statewide Voter Registration 22 System that became operative in December of 2005 23 and has been continuously operated since then by 24 Baker Tilly and then also our contractual 25 relationship with what is now Civix. So yes, I</p>

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<p>1 think Baker Tilly does have significant 2 institutional resources about familiarity with 3 elections.</p> <p>4 Q Do you think of Baker Tilly as having any 5 particular expertise in disability or 6 accessibility?</p> <p>7 MS. ABSHIRE: Objection. Vague.</p> <p>8 A I would say, again, to the extent to which 9 Baker Tilly has been involved, they've demonstrated 10 familiarity obtained perhaps through their 11 retention of specialists such as SPR. Baker Tilly 12 is a very large corporate entity that I assume does 13 have expertise with regard to disability issues. I 14 can only speak to their interaction with the 15 State of Indiana.</p> <p>16 Q Let's skip down to .pdf page 26 and scroll down to 17 the General Assumptions section.</p> <p>18 A Yes, I see that.</p> <p>19 Q Wonderful. So I've highlighted a provision that 20 says, The State agrees perfect security is not 21 attainable and Baker Tilly will work with the 22 State, Indiana counties, and vendors to improve 23 security by mitigating security risks, and assist 24 with advancing the cybersecurity technology through 25 these services.</p>	Page 93	<p>1 by that breach is a reality of modern life.</p> <p>2 Q Sorry. I'm just thinking about what you said. So 3 fair to say that this particular statement is about 4 technological security and, as you say, nothing is 5 ever perfect and the chance of a breach of some 6 kind is ever present regardless of the security 7 measures that you take?</p> <p>8 A Yes.</p> <p>9 Q Some degree of risk is unavoidable when using 10 technological products. Is that fair?</p> <p>11 A Yes, that's a fair statement.</p> <p>12 Q Is it also fair to say that some degree of risk is 13 going to be present no matter what you do and doing 14 every conceivable thing in your power to stop that 15 would come with costs?</p> <p>16 MS. ABSHIRE: Objection. Calls for 17 speculation.</p> <p>18 A Yes, I would agree. To say again, any endeavor 19 requires the expenditure of time or money or both 20 and so, yes, costs are clearly associated with it.</p> <p>21 Q Is it fair to say that Indiana could spend more 22 money or time trying to make their systems 23 unbreachable but doesn't because full 24 unbreachability is not possible and there's a 25 diminishing return with the expenditure of funds</p>	Page 95
<p>1 Do you see that?</p> <p>2 A Yes, I do.</p> <p>3 Q What does this mean?</p> <p>4 A I think it states a truism in that to the extent 5 that human beings are involved in any endeavor that 6 perfection is not attainable and that, in fact, 7 Baker Tilly will perform its best efforts to 8 achieve cybersecurity by mitigating security risks, 9 as we've noted, and assist with advancing new 10 developments or improved cybersecurity technology 11 as part of their work for the State.</p> <p>12 Q What kind of security is not perfectly attainable?</p> <p>13 A Well, I, again, fall back on the axiom that to the 14 extent that human beings are involved perfection in 15 any area is not attainable in the strict sense of 16 that word, and the State obviously agrees with that 17 as part of the contract general assumption. I 18 think those of us who are involved to any extent 19 with cybersecurity as those in election 20 administration have had to become more so in recent 21 years accept the reality that given enough 22 resources by a bad actor and given continually 23 evolving methods and sophistication of malware and 24 other devices that having a database that can avoid 25 being breached and having data destroyed or stolen</p>	Page 94	<p>1 after a certain point?</p> <p>2 A To the extent that I think, again, that is a truism 3 that applies to any endeavor that there is a point 4 of diminishing returns where expenditures are no 5 longer justifiable due to costs and limited 6 resources, then yes, that's true.</p> <p>7 Q Well, especially since perfection isn't attainable 8 anyway; right?</p> <p>9 A Correct.</p> <p>10 Q You've called these truisms, and I agree they are 11 truisms. Do the same general principles and 12 truisms apply to fraud in voting as well? By that 13 I mean there's probably always more that one could 14 do to prevent voter fraud or accusations of voter 15 fraud but at a certain point you have to stop 16 spending the money and the time on it because there 17 are diminishing returns compared to the degree of 18 security you're going to get with those additional 19 funds.</p> <p>20 MS. ABSHIRE: Objection. Compound and calls 21 for speculation.</p> <p>22 A Yes, I would certainly agree with that. In the 23 particular case you reference, the balance that's 24 being struck is between integrity and access and it 25 is possible to on one hand make voting so</p>	Page 96

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<p style="text-align: right;">Page 97</p> <p>1 accessible that it endangers the integrity of the 2 election process. If a person were to pass out 3 ballots on street corners using an honor system 4 where each voter promised to vote only one, that 5 would be maximum access but minimum integrity.</p> <p>6 Likewise, the obverse. If there were so many 7 obstacles placed in the way of an individual 8 obtaining a ballot that access was rendered almost 9 impossible, the ballots that were received would 10 certainly be secured and presumably the election 11 conducted with integrity but would defeat the 12 purpose which I indicated earlier in our discussion 13 is the primary point of voting, which is to allow 14 the voter to express their views with regard to 15 candidates and parties and questions.</p> <p>16 Q So for an example as sort of the balance between 17 integrity and access, you could ask all voters, for 18 instance, to provide fingerprints or DNA proof that 19 they are who they say they are but you don't; is 20 that right?</p> <p>21 A That's correct.</p> <p>22 Q And that's partly because it would be burdensome on 23 the voter and probably discourage some people from 24 voting who you want to have vote and who you trust 25 to vote and it would also be administratively</p>	<p style="text-align: right;">Page 99</p> <p>1 A I do.</p> <p>2 Q Great. Do you recognize this document?</p> <p>3 A Yes. I recognize it as an amendment designated #7 4 to a contract between the Secretary of State and 5 Baker Tilly entered into on April 22 of 2019.</p> <p>6 Q So the contract entered into on April 22 of 2019, 7 was that the document that we just saw, Exhibit F?</p> <p>8 A I believe that's correct, yes.</p> <p>9 Q Likewise, this contract is between the Indiana 10 Secretary of State and Baker Tilly. Did the IED 11 have any role in coming up with this contract?</p> <p>12 A I know that the Indiana Election Division was aware 13 of this contract but I don't recall without 14 refreshing my memory whether the Election Division 15 were signatories.</p> <p>16 (Witness reviewing laptop)</p> <p>17 A And the answer is no, we were not signatories, so 18 that confirms my recollection.</p> <p>19 Q Scrolling down to the bottom of the first page. 20 Fair to say this contract was signed in August of 21 2021?</p> <p>22 A Yes, that's correct.</p> <p>23 Q All right. Let's go to .pdf page 5. So fair to 24 say that this contract describes deliverables for 25 September 1, '21, through October 29, '21?</p>
<p style="text-align: right;">Page 98</p> <p>1 burdensome on the counties and the State collecting 2 all that information and comparing it; right?</p> <p>3 MS. ABSHIRE: Objection. Compound and calls 4 for speculation.</p> <p>5 A Yes. I think it would be intrusive on the privacy 6 of the voter. It would result in administrative 7 burdens for the counties and states and other 8 governments involved in administering the election 9 process. In the extreme case, if I may 10 characterize that, of DNA sampling collection would 11 impair confidence in the integrity of the election 12 administrators and in the entire process.</p> <p>13 Q So fair to say that in the voting fraud arena as 14 well perfect security is not attainable and a 15 balance has to be struck between integrity and 16 access?</p> <p>17 A Yes, that would be correct.</p> <p>18 MS. BRANDT-YOUNG: Okay. Let's mark another 19 document. This will be Exhibit G. The name of the 20 file is ACBI474-483 Baker Tilly Contract Amendment.</p> <p>21 THE WITNESS: Yes, I'm able to see that 22 document.</p> <p>23 Q All right. Is it up on the screen share now?</p> <p>24 A Yes, I can view the document.</p> <p>25 Q And you also have it on your personal device?</p>	<p style="text-align: right;">Page 100</p> <p>1 A Yes, that's correct.</p> <p>2 Q And it covers a Voting & Elections Accessibility 3 Program?</p> <p>4 A Yes, that's correct.</p> <p>5 Q So fair to say this was a contract with Baker Tilly 6 in part to implement SEA 398 as you described 7 previously?</p> <p>8 A Yes, I believe that's correct.</p> <p>9 Q Is there any other contract between the 10 Secretary of State or any Indiana entity and 11 Baker Tilly that is meant to cover implementation 12 of SEA 398 as it relates to voters with print 13 disabilities?</p> <p>14 A Not any other contract. There might be additional 15 amendments to this contract, but no, I'm not aware 16 of any other contract besides the one we're 17 referring to.</p> <p>18 Q So what the Summary of the Voting & Elections 19 Accessibility Program Requirements Development says 20 here is, This role provides services to assist the 21 State with the elicitation of business and 22 technical requirements, facilitation of interviews, 23 follow-up research, and development of requirements 24 and facilitating review and approval of 25 requirements. This role entails the solution</p>

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<p style="text-align: right;">Page 101</p> <p>1 architecture role to utilize approved requirements 2 and work with Civix or SPR to identify 3 implementation and operational cost estimates with 4 implementation timelines.</p> <p>5 Do you see that?</p> <p>6 A Yes, I do.</p> <p>7 Q Great. So how did you select Baker Tilly as the 8 vendor for this contract?</p> <p>9 A Again, based on the existing relationship that the 10 State has had with Baker Tilly, the Secretary of 11 State had full confidence in Baker Tilly's ability 12 to perform the tasks required under the contract.</p> <p>13 Q And is it fair to say that the expectation that 14 Baker Tilly work with Civix or SPR, is that because 15 Civix and SPR have the web accessibility expertise?</p> <p>16 A With regard to SPR, that is my understanding. I am 17 not particularly familiar with their past work 18 experience. Civix, of course, is a long-time 19 partner, as I indicated, from 2004 who would be 20 intimately involved with work that would be carried 21 out that would impact the election administration 22 module of the Statewide Voter Registration System.</p> <p>23 Q So we discussed previously how Civix maintains the 24 database; is that right?</p> <p>25 A Yes, that's correct.</p>	<p style="text-align: right;">Page 103</p> <p>1 Q So understanding that the Secretary of State is the 2 ultimate publisher of the website, is it fair to 3 say that there are portions of the website that 4 Baker Tilly facilitates and portions that Civix 5 facilitates?</p> <p>6 A Yes, I think that's fair. The Secretary of State 7 relies on Baker Tilly in particular to help 8 identify potential improvements to the information 9 presented on the website that may be submitted 10 particularly by county election and voter 11 registration officials who are users of the system 12 and the contributions or suggestions that ordinary 13 users might make.</p> <p>14 Q And Civix focuses in particular on portions of the 15 website that then go into the database or come out 16 of the database, for lack of a better way of 17 phrasing it; is that right?</p> <p>18 A I believe that I'm in agreement. I would rephrase 19 it a little differently to say that Civix 20 concentrates with regard to what is under the hood 21 of the car, whereas Baker Tilly and the 22 Secretary of State's office are more concerned with 23 the exterior image that's presented to the public 24 and not the inner workings of the system.</p> <p>25 Q So is it fair to say that it's not the job of Civix</p>
<p style="text-align: right;">Page 102</p> <p>1 Q And is it fair to say that indianavoters.com has a 2 web interface that enables, for instance, voters to 3 register through the website and have those records 4 go into the database that Civix maintains?</p> <p>5 A Yes, that is true generally.</p> <p>6 Q So generally speaking, Civix is in charge of the 7 website portions of the database that interface 8 with the public; is that right?</p> <p>9 A I would qualify that by saying that the 10 Secretary of State's office ultimately determines 11 the content of the web page itself and does so in 12 coordination with the Election Division in 13 responding to requests from the Election Division 14 but the Secretary of State is the ultimate 15 publisher, if you will, of the website.</p> <p>16 Q So in terms of the website and different portions 17 of it, does Baker Tilly facilitate portions of the 18 website with the Secretary of State?</p> <p>19 A Yes, I believe so. It is, of course, the public 20 face of the Statewide Voter Registration System and 21 the role of Baker Tilly in regard to the operation 22 and development of that system is important. I 23 fall back again on the fact that the Secretary of 24 State ultimately decides what appears and how it 25 appears, subject to some statutory restrictions.</p>	<p style="text-align: right;">Page 104</p> <p>1 to make any portion of the website accessible to 2 people with disabilities?</p> <p>3 A I would say that Civix has a responsibility to 4 perform its duties under the contract that it 5 enters into with the Secretary of State, who would 6 have responsibility to comply with applicable 7 requirements in this and any other area.</p> <p>8 Q Does Civix have any duties under this contract to 9 make any portion of the website or any other 10 communications of the Secretary of State or Indiana 11 Election Division accessible to voters with 12 disabilities?</p> <p>13 A Subject to refreshing my memory, I don't recall any 14 specific duty that Civix has in this regard with 15 regard to that particular task.</p> <p>16 Q So is that primarily the role of SPR in this 17 contract?</p> <p>18 A It is primarily the role of the Secretary of State 19 through its contractual relationship with 20 Baker Tilly, as opposed to Civix, who has retained 21 SPR as a subject matter expert.</p> <p>22 Q To put it another way, did the Secretary of State 23 ask Baker Tilly to contract with SPR because SPR 24 has accessibility expertise?</p> <p>25 A I have no information, to my knowledge, on why the</p>

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<p style="text-align: right;">Page 105</p> <p>1 Secretary of State might have asked for SPR to be 2 involved other than a recollection that Baker Tilly 3 I believe had previous familiarity with SPR and 4 were aware of their capabilities and recommended 5 that approach to the Secretary of State and the 6 Election Division.</p> <p>7 Q You said that Baker Tilly is a fairly large 8 organization, yes?</p> <p>9 A That is my general understanding, yes.</p> <p>10 Q So if they brought in SPR, it was to do something 11 that they couldn't do themselves for whatever 12 reason. Fair to say?</p> <p>13 MS. ABSHIRE: Objection. Calls for 14 speculation.</p> <p>15 A I don't know that I can say that's fair, in that, 16 again, Baker Tilly may very well have resources 17 but, like all businesses, their resources are 18 limited and they have multiple clients, and so an 19 alternative explanation of that may be that 20 Baker Tilly's resources that would have been 21 otherwise available to it were not at this time and 22 on this occasion available and, therefore, they 23 were required to reach out to SPR or another 24 provider who had that expertise.</p> <p>25 Q I actually meant for that to be included in my</p>	<p style="text-align: right;">Page 107</p> <p>1 Secretary of State staffer who entered into this 2 particular agreement would have had.</p> <p>3 Q I'll note that it's 1:03. With your permission I'd 4 like to go for another I think about five minutes 5 so that we can close out this subject. Is that 6 okay?</p> <p>7 A That's fine with me.</p> <p>8 Q Great. Who is the Secretary of State's primary 9 contact at Baker Tilly for the work done under this 10 contract?</p> <p>11 A Baker Tilly provides several members in their team 12 of employees. I would identify Seth Cooper, 13 C-o-o-p-e-r, as the primary individual.</p> <p>14 Q So looking at page 5 here and the activities and 15 deliverables, which of these activities and/or 16 deliverables involve implementation of SEA 398 as 17 it relates to voters with print disabilities?</p> <p>18 A I'm scrolling to reach page 5, if you'll give me a 19 moment.</p> <p>20 (Witness scrolling on laptop)</p> <p>21 A I'm reviewing the page that you've referenced.</p> <p>22 Q Thank you.</p> <p>23 (Witness reviewing laptop)</p> <p>24 A I think one that comes immediately to mind is the 25 third bullet under Activities with regard to the</p>
<p style="text-align: right;">Page 106</p> <p>1 definition if they weren't able to do it themselves 2 for some reason, but I think we're on the same page 3 here.</p> <p>4 A All right.</p> <p>5 Q What is SPR's background in voting, if any?</p> <p>6 A I'm sorry. My screen went dark for a moment. 7 Could you repeat that?</p> <p>8 Q What is SPR's experience in voting, if any?</p> <p>9 A I am not personally aware of SPR's involvement or 10 expertise with regard to voting.</p> <p>11 Q What's their expertise with regard to disability 12 access?</p> <p>13 A I have no knowledge with regard to their expertise 14 regarding issues related to disabilities.</p> <p>15 Q Who would know?</p> <p>16 A I would, again, rely on the individuals referenced 17 in the Secretary of State's office, in particular, 18 Jerry Bonnet. But I would also note that the 19 contract amendment that we're viewing here was 20 signed by a former Deputy Secretary of State, 21 Brandon Clifton, who's no longer employed by the 22 Secretary of State's office or a resident of the 23 state of Indiana, to my understanding, and so my 24 reference to Mr. Bonnet is conditioned on the fact 25 that he may not have the knowledge that a former</p>	<p style="text-align: right;">Page 108</p> <p>1 work with regard to polling place location wait 2 times. During the 2016 and 2020 elections there 3 was significant in-person turnout that in some 4 cases, such as Madison County, Indiana, in 2020 5 involved wait times that stretched out into hours 6 after the polls had closed.</p> <p>7 And that particular issue had been addressed 8 by one county, Vanderburgh County, previously in 9 their own homegrown system using the vote center 10 model, which Madison County had not adopted in 11 2020, to make certain that all voters, including 12 particularly voters with disabilities, were aware 13 of alternative locations where they could cast a 14 ballot without experiencing discomfort or the 15 inability to remain in line to vote. And the 16 county interviews were conducted in furtherance of 17 that and I know that elderly voters and voters with 18 disabilities were primarily in mind for that 19 particular aspect of the work.</p> <p>20 In reviewing the document now -- and I need to 21 scroll down a little farther on the page to see the 22 remainder -- I don't see any other items there that 23 were particularly focused on voters with 24 disabilities.</p> <p>25 Q Looking at the second bullet point on</p>

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Page 109 1 Requirements Development. In the middle of the 2 paragraph it says, Participate in requirement 3 review meetings with Civix and SPR. Participate in 4 technical demonstrations with Civix and SPR during 5 elicitation of technical requirements.	Page 111 1 voters with disabilities? 2 A I'm reviewing the Key Activities at the moment, 3 but . . . 4 (Witness reviewing laptop)
6 What do those two things mean, especially as 7 regard to voters with print disabilities? 8 A I take my understanding of that paragraph to mean 9 that Baker Tilly was charged with bringing the 10 State stakeholders, as we're referred to, up to 11 speed with regard to the existing capabilities and 12 limitations of the system and engaging in review 13 meetings with Civix and SPR. I think those 14 requirement review meetings were ones that were 15 between Baker Tilly and Civix and SPR as opposed to 16 with the Secretary of State or Election Division 17 directly. Likewise with regard to technical 18 demonstrations. Ultimately the work product 19 developed from those reviews and technical 20 demonstrations would have been presented to the 21 Secretary of State and Election Division for 22 approval.	11 A It recognizes the fact that the website published 12 by the Secretary of State, particularly with regard 13 to election material, contains a plethora of 14 information and that users, not only voters with 15 disabilities but others, have occasionally 16 expressed their frustration at being able to 17 readily locate the particular information that 18 they're looking for, and so the goal with regard to 19 this particular item was to have a more easily 20 locatable and comprehensive source rather than a 21 series of different publications on different 22 websites that might be useful for counties, their 23 poll workers, or voters with disabilities.
23 Q All right. Let's take a look at .pdf page 3 of 24 this contract. In particular, at the very bottom 25 of the page No. 13 says, A "Screen overlay" refers	24 Q So is it fair to say there are two target audiences 25 for this objective, the county election officials
Page 110 1 to a window of content on a website that 2 prioritizes focus on a website element for people 3 viewing the website on a computer or mobile screen. 4 What is the role of screen overlays in this 5 contract? How will they be used? 6 A My understanding is they would be used in 7 conjunction with an assistive technology device, 8 which is referenced in Paragraph 12 immediately 9 above, so that by virtue of the screen overlay a 10 voter with vision disabilities or other 11 disabilities would have the capacity to navigate a 12 website being aided by a screen overlay.	Page 112 1 on the one hand and voters with disabilities on the 2 other hand? 3 A Yes, that's correct. 4 Q And this is primarily about websites run by the 5 Secretary of State, not websites run by the 6 counties; is that correct? 7 A Yes, that's entirely correct. Not every county 8 election office has a website, and so it's 9 exclusively referring to the State website that 10 we've been discussing. 11 Q Okay. Scrolling down to the next page but still 12 within this objective, No. 6 is, determine if the 13 voting accessibility information will be provided 14 as a static landing page or interactive portal and 15 if login information is needed. 16 Do you see that?
16 A No, not that I'm aware of. 17 Q Okay. Then the last page that we'll look at on 18 this exhibit and then we'll break for lunch is .pdf 19 page 7. I'm scrolling down to the second half of 20 the page where there is a column that contains the 21 words Voting Accessibility Landing Page / Portal. 22 Do you see that? 23 A Yes, I do. 24 Q Is this voting accessibility landing page and 25 portal part of the SEA 398 work as it relates to	17 A I'm sorry. There's a page break on my document, so 18 I was having a little trouble following along. 19 Q Sure. 20 A You're referring to subdivision 3? 21 Q Yes, subdivision 3, item 6 -- 22 A Okay. 23 Q -- on the top of .pdf page 8. 24 A Page 8? I'm sorry. You reference page 8 and I'm 25 looking at page 5 and 6.

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<p style="text-align: right;">Page 113</p> <p>1 Q I apologize. So this is .pdf page 8.</p> <p>2 A Oh, I see. All right. We have some conflicting</p> <p>3 pagination systems in place here, I think, so . . .</p> <p>4 Q You're absolutely correct about that.</p> <p>5 A All right. I'm sorry to be redundant, but would</p> <p>6 you mind repeating that?</p> <p>7 Q I'm very happy to repeat it, in part because I</p> <p>8 promised you that .pdf page 7 was the last page and</p> <p>9 that was not accurate, .pdf page 8 is the last</p> <p>10 page. In the upper right-hand corner all the way</p> <p>11 to the right there's a 6.) and it says that one of</p> <p>12 the activities under this objective is to,</p> <p>13 Determine if web accessibility testing will be</p> <p>14 required based on anticipated users interacting</p> <p>15 with the website / portal.</p> <p>16 A Yes, I see that.</p> <p>17 Q So what does that mean?</p> <p>18 A I think it has several tasks involved within it.</p> <p>19 First of all, it requires a determination on who</p> <p>20 the anticipated users might be, which would be</p> <p>21 individuals with a wide variety of types of</p> <p>22 disabilities or other physical limitations, and</p> <p>23 secondly, the type of testing that might be</p> <p>24 necessary based on the particular disability of</p> <p>25 that group of users, which may or may not be</p>	<p style="text-align: right;">Page 115</p> <p>1 A No. I don't recall that without refreshing my</p> <p>2 memory.</p> <p>3 Q Do you know whether they determined whether login</p> <p>4 information would be needed?</p> <p>5 A No. I don't recall that.</p> <p>6 Q Who at SPR is the person that interfaces most</p> <p>7 frequently with the Secretary of State's office</p> <p>8 about this contract?</p> <p>9 A I am not aware of any individual with SPR who</p> <p>10 directly interfaces with the Secretary of State's</p> <p>11 office regarding the contract. To my knowledge,</p> <p>12 the Secretary of State's interaction has been</p> <p>13 entirely with Baker Tilly personnel.</p> <p>14 Q If counties are expected to provide information to</p> <p>15 UOCAVA voters with print disabilities in accessible</p> <p>16 formats -- and when we come back after the break</p> <p>17 we'll talk about what some of that information or</p> <p>18 those documents might be -- where in this contract,</p> <p>19 if anywhere, does it show that SPR and/or</p> <p>20 Baker Tilly are working on how to provide guidance</p> <p>21 to the counties about how to do that?</p> <p>22 MS. ABSHIRE: Objection. Vague.</p> <p>23 A I'd like the ability to scroll up here on the page.</p> <p>24 Q Please do.</p> <p>25 (Witness scrolling on laptop)</p>
<p style="text-align: right;">Page 114</p> <p>1 required for one individual as opposed to another.</p> <p>2 Q So do you know if a decision has been made about</p> <p>3 this item yet? Have they determined whether web</p> <p>4 accessibility testing will be required?</p> <p>5 A No, I'm not aware of any determination that's been</p> <p>6 made.</p> <p>7 Q Looking at No. 3 in this list, which splits the</p> <p>8 page between .pdf page 7 and .pdf page 8.</p> <p>9 A Yes.</p> <p>10 Q We also have the Bates numbering just for maximum</p> <p>11 confusion (smiling). There's the statement, Based</p> <p>12 on selected functional components, determine if the</p> <p>13 voting accessibility information will be provided</p> <p>14 as a static landing page or interactive portal and</p> <p>15 if login information is needed.</p> <p>16 Do you see that?</p> <p>17 A Yes, I do.</p> <p>18 Q Who is the target user of the information</p> <p>19 contemplated here? Is this for county elections</p> <p>20 officials or for voters with disabilities?</p> <p>21 A I would based on my understanding respond that the</p> <p>22 target audience for this particular point would be</p> <p>23 a user, presumably a voter, with disabilities.</p> <p>24 Q Do you know what the functional components selected</p> <p>25 were?</p>	<p style="text-align: right;">Page 116</p> <p>1 A I'm referring now I believe to page 7. I need to</p> <p>2 scroll a little farther down, the first of the</p> <p>3 Key Activities.</p> <p>4 (Witness reviewing laptop)</p> <p>5 A No. 1 and No. 2 and No. 3 reference county poll</p> <p>6 workers and their needs and particularly poll</p> <p>7 workers with disabilities, and I think that</p> <p>8 language, although it does not refer to county</p> <p>9 election offices explicitly, by necessity requires</p> <p>10 coordination through the county election office.</p> <p>11 Because poll workers in Indiana are appointed by</p> <p>12 the county election official upon recommendation of</p> <p>13 political parties or because the election board is</p> <p>14 filling a vacancy where no one has been nominated,</p> <p>15 and so, therefore, I think communications with the</p> <p>16 counties in this case would be perfectly in keeping</p> <p>17 with the standard communication channel we have</p> <p>18 with counties on other issues. But I don't see</p> <p>19 anything more explicit than what I've pointed out</p> <p>20 here.</p> <p>21 Q Fair to say, is it, that the language is pretty</p> <p>22 broad? In particular under No. 1, the sharing of</p> <p>23 best practices and training related to</p> <p>24 accessibility equipment and features and developing</p> <p>25 any other materials that can be incorporated into</p>

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<p>1 county and poll worker training.</p> <p>2 A I would view that as broad language, so certainly.</p> <p>3 Q And training on how to make documents within the</p> <p>4 UOCAVA process accessible could be part of that?</p> <p>5 Fair to say?</p> <p>6 A I think that would be fair to say.</p> <p>7 MS. BRANDT-YOUNG: All right. So why don't we</p> <p>8 stop there. I've kept you considerably past 1:00,</p> <p>9 and so I appreciate your patience.</p> <p>10 THE WITNESS: Not at all.</p> <p>11 MS. BRANDT-YOUNG: Thank you. Why don't we</p> <p>12 break for lunch and we'll come back at 2:00.</p> <p>13 MS. ABSHIRE: Christina, could we actually</p> <p>14 have forty-five minutes for lunch? Half an hour</p> <p>15 proved to be a little challenging last time.</p> <p>16 MS. BRANDT-YOUNG: We completely understand.</p> <p>17 What time would you like to come back?</p> <p>18 MS. ABSHIRE: Let's say 2:15. Is that okay?</p> <p>19 THE WITNESS: That's certainly fine with me.</p> <p>20 MS. ABSHIRE: Is that okay with you,</p> <p>21 Christina?</p> <p>22 MS. BRANDT-YOUNG: We'll make it work.</p> <p>23 MS. ABSHIRE: Okay. Thank you.</p> <p>24 MS. BRANDT-YOUNG: Thank you very much.</p> <p>25 THE WITNESS: Thank you.</p>	<p>Page 117</p> <p>1 this year.</p> <p>2 Q Perfect. And another thing that the State will</p> <p>3 have to do is to educate county boards of elections</p> <p>4 further through the order and by updating its</p> <p>5 publications in paper and on its website; is that</p> <p>6 right?</p> <p>7 A Yes, that's right.</p> <p>8 Q Great. So we discussed earlier that there are</p> <p>9 three steps to UOCAVA voting. One is registration</p> <p>10 to vote, which is usually combined with application</p> <p>11 to vote absentee as a UOCAVA voter; step two is</p> <p>12 transmission of the blank absentee ballot and</p> <p>13 related documents to the voter from the county</p> <p>14 board of elections; and then the third step is</p> <p>15 transmission of the marked absentee ballot and</p> <p>16 related documentation from the voter back to their</p> <p>17 county board of elections. Is that three-step</p> <p>18 process characterization broadly accurate?</p> <p>19 A Yes, that's accurate.</p> <p>20 Q Great. So starting with the first step, which is</p> <p>21 registration to vote usually combined with a</p> <p>22 request to vote as a UOCAVA absentee voter, what</p> <p>23 work must the Secretary of State and/or the</p> <p>24 Election Division do to come up with a system that</p> <p>25 complies with WCAG for the voter registration and</p>
<p>Page 118</p> <p>1 (The deposition recessed from 1:25 to 2:15 for</p> <p>2 lunch.)</p> <p>3 Q So before the lunch break we were talking about how</p> <p>4 one of the expectations is that SPR will review</p> <p>5 materials used by the State or by counties for</p> <p>6 compliance with the WCAG standard; right?</p> <p>7 A That's correct.</p> <p>8 Q And we saw the contract amendment that would permit</p> <p>9 that; right?</p> <p>10 A Yes, that's correct.</p> <p>11 Q Great. So generally the Secretary of State with</p> <p>12 the approval of the Election Division has a duty to</p> <p>13 try and make the UOCAVA absentee voting by mail</p> <p>14 process accessible for users with certain types of</p> <p>15 print disabilities to the WCAG standard; right?</p> <p>16 A Yes, I would agree.</p> <p>17 Q And hopefully it's fair to say developing or</p> <p>18 devising such a system is going to take many steps;</p> <p>19 right?</p> <p>20 A Yes, that's true.</p> <p>21 Q So one of those steps that's already been done is</p> <p>22 that the Secretary of State has issued an order</p> <p>23 spelling out the preliminary aspects of compliance;</p> <p>24 is that right?</p> <p>25 A Yes, that's correct, on September the 27th of</p>	<p>Page 119</p> <p>1 absentee ballot request step?</p> <p>2 A The Secretary of State and Election Division will</p> <p>3 need to develop application forms for both the</p> <p>4 absentee process and the voter registration process</p> <p>5 that are accessible under the WCAG standard that's</p> <p>6 applicable for voters with disabilities.</p> <p>7 Q So that would be a form like the FVAP postcard</p> <p>8 application form that we previously saw in</p> <p>9 Exhibit C; is that right?</p> <p>10 A Yes, that's correct.</p> <p>11 Q It needs to be customized to demonstrate that the</p> <p>12 voter is a voter with an applicable print</p> <p>13 disability, but that's the purpose of the form;</p> <p>14 correct?</p> <p>15 A Yes, that would be correct.</p> <p>16 Q A voter needs to designate a party preference in</p> <p>17 order to vote in a primary election; is that right?</p> <p>18 A In Indiana, that's correct.</p> <p>19 Q How does a voter do that?</p> <p>20 A The voter can do it in a number of ways. Voting in</p> <p>21 person, they can request a political party primary</p> <p>22 ballot orally to the poll workers. That</p> <p>23 declaration is documented either by the voters</p> <p>24 themselves or by the poll workers on a poll list.</p> <p>25 When it comes to the absentee process, the absentee</p>

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<p style="text-align: right;">Page 121</p> <p>1 application for a primary to be approved must 2 indicate a party preference on the part of the 3 voter, assuming that there's not a nonpartisan 4 public question that could be an alternative.</p> <p>5 Q Is a party designation something that will need to 6 go on the new application for an accessible 7 absentee ballot?</p> <p>8 A Yes. It would be part of the application, a 9 required component under the statute, and, 10 therefore, would.</p> <p>11 Q Can we agree that some people are going to want to 12 keep their party affiliation to themselves?</p> <p>13 MS. ABSHIRE: Objection. Speculation.</p> <p>14 A I am certain that there are some people who object 15 to stating any party preference as part of voting 16 in a primary.</p> <p>17 Q Well, and the question is: Do you think that there 18 are voters who would like to keep their party 19 preference private from their friends, co-workers, 20 and people around them?</p> <p>21 A I would expect that to be the case, yes.</p> <p>22 Q So people who fall in that category will want to 23 fill out this form privately and independently so 24 that they don't have to ask for help designating a 25 party preference; is that right?</p>	<p>1 organization located in Central Indiana that has 2 been active for decades in providing training 3 services for people with a variety of disabilities 4 but particularly focused on blind voters or voters 5 with visual disabilities. Those include any number 6 of activities that might permit a person to seek 7 employment, to reduce what Bosma describes as the 8 70 percent unemployment rate among blind 9 individuals. Bosma also involves at least some of 10 their individuals in the production of products 11 that would provide what I might call manual or 12 technical skills in addition to purely intellectual 13 or those types of skills.</p> <p>14 Bosma is a very well-respected institution in 15 the community. The Bosma family has been very 16 prominent for years and very well respected. So I 17 think that's a fair summary of my knowledge of 18 Bosma.</p> <p>19 Q To your knowledge, has Bosma provided or been asked 20 to provide any input into the content of the 21 absentee voter application form?</p> <p>22 A No, not to my knowledge. Again, it's at this point 23 purely an internal Indiana Election Division 24 product that, as with any draft form, a new or 25 revised form, we would not share until we had</p>
<p style="text-align: right;">Page 122</p> <p>1 MS. ABSHIRE: Objection. Calls for 2 speculation.</p> <p>3 A I would again assume that in that scenario they 4 would want their party choice to be private and 5 independent.</p> <p>6 Q So the Election Division or Secretary of State, 7 where are those entities in the process of 8 developing this form to make it accessible for 9 voters with print disabilities?</p> <p>10 A The Election Division is in the process of 11 internally circulating a draft with regard to this 12 form -- I can speak to my personal knowledge on 13 that -- but the Election Division itself has not 14 completed the process by having the approval of 15 both co-directors to a draft product.</p> <p>16 Q Is the draft being shared with any entity external 17 to the IED right now?</p> <p>18 A I'm not aware of the draft itself being shared with 19 an entity external to IED at this point. There are 20 others in the Election Division who may have, but I 21 don't have any personal knowledge of that.</p> <p>22 Q Are you familiar with an organization called Bosma?</p> <p>23 A I am.</p> <p>24 Q Can you explain for the record who they are?</p> <p>25 A Yes. Bosma Enterprises is a large non-profit</p>	<p>1 reached a consensus amongst ourselves and perhaps 2 had some initial analysis done by our forms 3 management office in state government.</p> <p>4 Q Do I understand correctly that the IED is working 5 on the content of the form right now?</p> <p>6 MS. ABSHIRE: I'm going to object because this 7 is outside the scope of the 30(b)(6) notice for the 8 Secretary of State's office. This is not the 9 Indiana Election Division's deposition --</p> <p>10 MS. BRANDT-YOUNG: Courtney, I'm so sorry. 11 You're quite far away from the speaker.</p> <p>12 MS. ABSHIRE: Is this better?</p> <p>13 MS. BRANDT-YOUNG: That's better. Thank you. 14 Can you go ahead and state your objection again?</p> <p>15 MS. ABSHIRE: The objection is that this is 16 outside the scope of the 30(b)(6) notice for the 17 Secretary of State's office. This is not the 18 deposition of the Indiana Election Division, as 19 that's already occurred.</p> <p>20 MS. BRANDT-YOUNG: So I think our responses 21 are two. One of which is that the witness 22 indicated that he was answering in his personal 23 capacity, which I think he's entitled to do, and 24 another is that we provided the Secretary of 25 State's office the opportunity to stipulate to this</p>

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<p style="text-align: right;">Page 125</p> <p>1 information already provided by this witness on 2 this topic and they declined.</p> <p>3 MS. ABSHIRE: Sure. You already had the 4 opportunity to ask the Indiana Election Division 5 these questions during the deposition last week.</p> <p>6 Q Then perhaps the question is: Is the Secretary of 7 State aware of what the Indiana Election Division 8 is doing to develop this form?</p> <p>9 A To my knowledge, I'm not aware that the 10 Secretary of State's office is aware of the 11 Election Division's activities with regard to the 12 development of this form. The Secretary of State's 13 office is certainly aware that a combined form 14 modeled on the FPCA form is to be developed by the 15 Election Division, but with regard to its knowledge 16 of current status I would say no, that's not been 17 expressly communicated by me.</p> <p>18 Q Is the Secretary of State's office aware of or does 19 it have an opinion on whether WCAG-compliant all 20 online form for applying for an accessible absentee 21 ballot will be developed at indianavoters.com?</p> <p>22 A I'd ask you to clarify your question a little bit. 23 When you say will be developed at 24 indianavoters.com, I'm not certain what you mean by 25 development. Do you mean that it will appear on</p>	<p style="text-align: right;">Page 127</p> <p>1 gone through the approval process by the 2 Election Division.</p> <p>3 (Ms. Robaidek joined the deposition at this 4 time.)</p> <p>5 Q So regarding the second step of the UOCAVA process, 6 which is the transmission of the blank absentee 7 ballot and related documents to the voter from the 8 county board of elections, there are several 9 documents involved that need to be made WCAG 10 compliant. Is that right?</p> <p>11 A Yes, that's right.</p> <p>12 Q And those constitute the blank ballot secrecy 13 waiver, which we've already seen in Exhibit E, an 14 absentee voter bill of rights, any county-specific 15 instructions, and a blank absentee ballot; is that 16 right?</p> <p>17 A Yes, that would be correct. The county 18 instructions are optional, but the others are an 19 integral part of the process.</p> <p>20 Q Thank you. And fair to say that the blank ballot 21 secrecy waiver and the absentee voter bill of 22 rights are both developed by the State?</p> <p>23 A Yes, that's fair to say.</p> <p>24 Q And in terms of the optional county-specific 25 instructions and the blank absentee ballot, those</p>
<p style="text-align: right;">Page 126</p> <p>1 that particular web page or am I reading more into 2 that than you intended?</p> <p>3 Q The current FVAP form is a downloadable .pdf form. 4 It requires somebody to download it, print it out, 5 fill it out, sign it. There are forms at 6 indianavoters.com that can be completed entirely 7 online through an HTML process without having to 8 print anything out and sign it. So the question 9 is: Given that people can register to vote 10 generally at indianavoters.com using an all HTML 11 process, is the Secretary of State aware of whether 12 anything will be developed at indianavoters.com to 13 enable people to request an accessible absentee 14 ballot similarly using an all online HTML process?</p> <p>15 A I believe the answer is yes, that the Secretary of 16 State would be aware that that is going to be a 17 requirement for the indianavoters.com website to 18 include a form in that format.</p> <p>19 Q What work has been done on that so far?</p> <p>20 A None that I am aware of speaking on behalf of the 21 Secretary of State. With regard to the 22 Election Division I've already indicated the 23 progress of our work, but I would note that, again, 24 the Secretary of State's office would publish a 25 form on a website in any format only after it had</p>	<p style="text-align: right;">Page 128</p> <p>1 are developed by the counties; is that correct?</p> <p>2 A Yes, that's correct.</p> <p>3 Q Is it fair to say that the Secretary of State and 4 the Indiana Election Division contemplate that some 5 voters with print disabilities participating in the 6 program devised for voters with print disabilities 7 by SEA 398 will receive their ballots by e-mail, 8 mark them with their own assistive technology by 9 e-mail, and then e-mail them back?</p> <p>10 A Yes, that is fair to say.</p> <p>11 Q So since we agree that those four types of 12 documents, one of which is optional, all need to be 13 made WCAG compliant in order to be used in a UOCAVA 14 program for absentee voters with print 15 disabilities, the counties will need guidance on 16 how to make those documents WCAG compliant; is that 17 right?</p> <p>18 A Yes, I would anticipate that.</p> <p>19 Q And that's one of the purposes of the Secretary of 20 State entering into the contract with Baker Tilly 21 that mentions SPR? Do I understand that correctly?</p> <p>22 A I believe that's correct, yes.</p> <p>23 Q So that guidance hasn't been developed yet; 24 correct?</p> <p>25 A That's correct.</p>

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<p>1 Q And any written guidance would probably be 2 accompanied by educational presentations and 3 trainings, not just reduced to paper? Is that fair 4 to say?</p> <p>5 A Yes, that would be our expectation. Speaking now 6 in the role of the Election Division. The 7 Election Division has regularly-scheduled meetings 8 during the course of each calendar year with the 9 association of circuit court clerks and the Indiana 10 Voter Registration Association at which we will 11 have a focus on particular work to be done in the 12 election process that is of immediate concern, and 13 so, yes, I would anticipate it in those forums and 14 perhaps others.</p> <p>15 Q Those trainings haven't been developed yet; is that 16 right?</p> <p>17 A No, the trainings have not been developed at this 18 point.</p> <p>19 Q If this litigation is not resolved before May 2022, 20 will the Secretary of State or Indiana Election 21 Division refrain from giving guidance to the 22 counties about these things?</p> <p>23 A No. The Indiana Election Division and the 24 Secretary of State have already proceeded to give 25 the guidance that was possible to give following</p>	<p>Page 129</p> <p>1 Do I understand that right? 2 A Yes, that's correct.</p> <p>3 Q And you're not specifically aware that any of the 4 vendors or counties have any particular expertise 5 in making documents accessible to voters with print 6 disabilities; is that correct?</p> <p>7 A No, I cannot recall any information about that.</p> <p>8 Q And so the Secretary of State is not aware?</p> <p>9 A No, the Secretary of State is not aware of any such 10 activity.</p> <p>11 Q Is the Secretary of State aware of any county 12 that's already providing any of these 13 UOCAVA-related documents, mostly ballots and 14 optional county-specific instructions, in alternate 15 formats, like large print or braille?</p> <p>16 A No, the Secretary of State's office is not aware of 17 any such counties.</p> <p>18 Q Does the Secretary of State's office have any plan 19 to instruct the counties to do that before May of 20 2022?</p> <p>21 A The Secretary of State's office has plans to 22 instruct the counties with regard to compliance 23 with Senate Enrolled Act 398 to the extent that the 24 products necessary and the programming necessary 25 has been developed and implemented and to advise</p>
<p>1 the enactment of Senate Enrolled Act 398 in the 2 legislative summary I referenced earlier, in the 3 well-attended conference we just concluded, and I'm 4 sure would do so to the extent it can even if 5 litigation is continuing during and after the 6 May 2022 primary.</p> <p>7 Q Is information about how to make documents WCAG 8 compliant part of the policy guidance already given 9 or the presentations already given?</p> <p>10 A No, not to my information.</p> <p>11 Q All right. Here are some things that I think are 12 uncontroversial and so I'm going to summarize them 13 for the purpose of saving some time. Let me know 14 if there's something not right in here or if it's 15 incomplete.</p> <p>16 A Certainly.</p> <p>17 Q Thank you. Usually when counties develop ballot 18 styles they use the assistance of vendors like 19 Election Systems & Software, Microvote, 20 Hart InterCivic, Unisyn, and others; is that right?</p> <p>21 A Yes, that's correct.</p> <p>22 Q Those vendors frequently send ballot proofs to 23 counties that become finalized in some sort of 24 electronic form and attached to UOCAVA e-mails, 25 although a few counties do their ballots in-house.</p>	<p>Page 130</p> <p>1 counties of what is intended to be prepared and 2 implemented.</p> <p>3 Q So can you describe the contents of that plan for 4 us, please.</p> <p>5 A I would say it's in keeping with our standard 6 operating procedures. That is, oftentimes when a 7 change is made that involves multiple counties who 8 may have different levels of resources available 9 the Secretary of State or the Election Division or 10 both will conduct surveys of counties to determine 11 if counties have resources available, if counties 12 have specific preferences with regard to the form 13 that documents or other products might take. In 14 the past the counties had representatives on the 15 Vote Indiana team that was used to develop the 16 Help America Vote Act state plan, and so a similar 17 model, albeit not quite as formal or structured, 18 would be in keeping with our standard procedures.</p> <p>19 The Secretary of State and Election Division 20 also make an effort to identify representative 21 counties who use different voting system vendors to 22 ensure that products or solutions are compatible 23 with the variety of vendors who do business with 24 Indiana counties on behalf of the voters. So I 25 would anticipate that in this case the same model</p>

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<p>1 would be carried out.</p> <p>2 Q So you mentioned a policy that's been developed by</p> <p>3 the Secretary of State and Indiana Election</p> <p>4 Division. Let's take a look at that.</p> <p>5 MS. BRANDT-YOUNG: We'll mark it as Exhibit H.</p> <p>6 The file name is ACBI832-844 Absentee Voting</p> <p>7 Procedures and it goes on from there.</p> <p>8 THE WITNESS: Yes, I believe I see the</p> <p>9 document.</p> <p>10 Q Sharing the screen. And do you see a document</p> <p>11 here, sir?</p> <p>12 A Yes, I do.</p> <p>13 Q Lovely. Do you recognize that?</p> <p>14 A Yes, I do. It is the order that we referenced</p> <p>15 earlier issued by the Secretary of State on</p> <p>16 September 27 of this year.</p> <p>17 Q Thank you. So this is the current version of the</p> <p>18 policy and the policy is active; is that right?</p> <p>19 A That's correct.</p> <p>20 Q Is it fair to say that it sets procedure at the</p> <p>21 level of Secretary of State and the Indiana</p> <p>22 Election Division but doesn't instruct the county</p> <p>23 boards to do something specific? Is that fair?</p> <p>24 A I think it would be fair to characterize it as</p> <p>25 setting forth the duties of the Secretary of State</p>	<p>Page 133</p> <p>1 not recall it being included in the</p> <p>2 Election Administrator's Manual.</p> <p>3 I will add that was the last document that we</p> <p>4 received from the printer literally days before our</p> <p>5 conference began, and so I haven't had a chance to</p> <p>6 consult it much at this time.</p> <p>7 Q Has the policy itself been distributed to anyone</p> <p>8 outside of the Election Division,</p> <p>9 Election Commission, or Secretary of State?</p> <p>10 A Not that I recall outside of the context of this</p> <p>11 litigation.</p> <p>12 Q All right. So let's scroll together to .pdf</p> <p>13 page 11 and scroll to the bottom half of the page</p> <p>14 under 1.9 New Form Impacts.</p> <p>15 MS. ABSHIRE: Sorry, Christina. Which page?</p> <p>16 MS. BRANDT-YOUNG: I'm sorry. I didn't hear</p> <p>17 the question.</p> <p>18 MS. ABSHIRE: Which page was that, Christina?</p> <p>19 Was it 11?</p> <p>20 MS. BRANDT-YOUNG: Yes, please.</p> <p>21 A Yes, I have that portion of the document visible on</p> <p>22 the screen.</p> <p>23 Q Wonderful. So in terms of the New Form Impacts</p> <p>24 listed here, it lists that a combined form for</p> <p>25 voters with print disabilities, a combined voter</p>
<p>Page 134</p> <p>1 and the Election Division that perhaps has some</p> <p>2 obvious application to counties but the primary</p> <p>3 focus is State level.</p> <p>4 Q Are you aware of any amendments planned for this</p> <p>5 policy?</p> <p>6 A No, I am not.</p> <p>7 Q Is the Secretary of State aware of any subsequent</p> <p>8 policy that may come out instructing the county</p> <p>9 boards?</p> <p>10 A No. The Secretary of State is aware of the lacuna</p> <p>11 in the law, Senate Enrolled Act 398, regarding the</p> <p>12 absentee ballot application deadline that I</p> <p>13 referenced earlier in the deposition, but no, not</p> <p>14 beyond that.</p> <p>15 Q Has the policy already been incorporated into other</p> <p>16 guidance issued by the Secretary of State or the</p> <p>17 Election Division, like the 2022 Voter Registration</p> <p>18 Guidebook, the 2022 Election Administrator's</p> <p>19 Manual, or anything else?</p> <p>20 A I have to pause to recollect this. We have to go</p> <p>21 to print with these documents at approximately the</p> <p>22 time this order was issued, and I recall that we</p> <p>23 halted Voter Registration Guidebook production and</p> <p>24 I believe that it was to include this information</p> <p>25 but I may be mistaken with regard to that. I do</p>	<p>Page 136</p> <p>1 registration and absentee ballot request form will</p> <p>2 have to be developed, and also a ballot secrecy</p> <p>3 waiver for faxed/mailed ballots will have to be</p> <p>4 developed.</p> <p>5 We've already seen the prior UOCAVA examples</p> <p>6 of those forms. Do I have that right?</p> <p>7 A Yes, that's right.</p> <p>8 Q So neither of these forms is the absentee ballot or</p> <p>9 the optional county-specific instructions; right?</p> <p>10 A That is correct.</p> <p>11 Q Does the Secretary of State know why those two</p> <p>12 document types are not listed here?</p> <p>13 A I would state this is speculation on my part, but I</p> <p>14 would believe the answer is the order, as I said,</p> <p>15 had its primary focus on the State actors in the</p> <p>16 process and the two items you've listed or two</p> <p>17 items you mentioned are ones developed primarily by</p> <p>18 the counties not using the same State form process</p> <p>19 I discussed earlier. That might account for the</p> <p>20 reason for the omission.</p> <p>21 Q So in your opinion, the omission is not likely to</p> <p>22 be because they're not regarded as part of the</p> <p>23 WCAG-compliant absentee UOCAVA voting process. Is</p> <p>24 that fair?</p> <p>25 A That is my understanding, yes.</p>

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<p style="text-align: right;">Page 137</p> <p>1 Q Likewise, looking further down the page at 1.10 Web 2 Accessibility Testing Impacts. 3 A Yes, I see that at least in part. 4 Q Wonderful. If you're able to scroll so that you 5 can see the bottom of .pdf page 11 and the top of 6 .pdf page 12, there is a list of four items there 7 I'm hoping you can look at. 8 A Yes, I can see them. 9 Q Great. So 1.10 says, Pursuant to the Indiana Code, 10 the print disabled absentee ballot procedures will 11 utilize version 2.1 of the Web Content 12 Accessibility Guidelines. 13 At a minimum, the following will need to be 14 tested for WCAG 2.1 compliance: 15 1) The Indiana Voter Portal at 16 IndianaVoters.com; 2) Combined form used by voters 17 with print disabilities; 3) Ballot Secrecy Waiver; 18 and 4) County Contact Form. 19 Do you see that? 20 A I do. 21 Q The Indiana Voter Portal at indianavoters.com I 22 think speaks for itself. The combined form and the 23 ballot secrecy waiver are the two documents already 24 in the UOCAVA process that we've already discussed; 25 is that right?</p>	<p style="text-align: right;">Page 139</p> <p>1 out the four forms indicated, not making an 2 exclusionary statement with regard to the others. 3 Q So it's not the position of the Secretary of State 4 that none of those documents, the bill of rights, 5 accessible ballot, and county-specific optional 6 instructions, don't need to be tested for WCAG 7 compliance. Is that fair? 8 A That is correct. 9 Q Well, there seem to be at a minimum an omission 10 here, except for the at a minimum language. Do you 11 expect that this policy will be clarified at any 12 time to include those? 13 A I know that the Secretary of State in issuing this 14 document intended for it to be a comprehensive 15 document to fulfill her responsibilities under the 16 statute that we cited, 3-11-4-6(k). And the 17 Secretary of State believes that she retains the 18 authority to amend the order but also wishes to do 19 so in circumstances where there's a demonstrable 20 compelling reason to amend the document, and the 21 Secretary of State has not determined whether 22 particular amendments would require the adoption of 23 an amendment to this order or the information could 24 be conveyed in another context. 25 Q Fair to say you don't want to amend these types of</p>
<p style="text-align: right;">Page 138</p> <p>1 A That's correct. 2 Q And the county contact form, is it fair to 3 summarize that as containing the contact details 4 for county elections officials to whom someone 5 would send their absentee voter application? 6 A Yes, that's fair. 7 Q Thank you. So, likewise, the bill of rights is not 8 listed here; is that right? 9 A That's correct. 10 Q The accessible ballot is not listed here; is that 11 right? 12 A That's correct. 13 Q And the county-specific instructions which are 14 optional also not listed here; is that right? 15 A That's correct. 16 Q What is the opinion of the Secretary of State on 17 why that is? 18 A On behalf of the Secretary of State, I would opine 19 that the latter two documents with regard to the 20 optional county instructions and the ballot were 21 not included I think because of the focus on the 22 State. With regard to the absentee bill of rights 23 I note, as you did, that the paragraph begins with 24 the preface at a minimum, and so it's not intended 25 to be a comprehensive exclusive list but to call</p>	<p style="text-align: right;">Page 140</p> <p>1 orders every week? 2 A It is fair to say that everyone involved in the 3 process benefits with stability and continuity and, 4 therefore, amendments should be taken after due 5 deliberation and for adequate reasons. 6 Q So in terms of the forms that we've discussed that 7 could have been listed here and right now are not, 8 is it fair to say there's no current plan to amend 9 the policy in order to correct those things 10 missing? 11 A I am not aware of any plans by the Secretary of 12 State to amend the policy to correct the omissions 13 that you've referred to. 14 Q If the policy is not corrected, will it be possible 15 nonetheless to offer training and other sub-policy 16 level guidance to the counties that would include 17 those documents? 18 A Yes. 19 Q Is there any plan currently to do that as regards 20 to the documents that could be listed here but 21 aren't? 22 A On behalf of the Secretary of State, I'm not aware 23 of any current plan to do so. 24 Q So there's a sentence here saying, The State is 25 currently exploring options for using a company to</p>

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<p style="text-align: right;">Page 141</p> <p>1 assist with testing our assets against the WCAG, 2 which would include utilizing individuals with 3 visual disabilities and various adaptable 4 technology. Testing may include assistive 5 technologies, such as voice-to-text and screen 6 reader devices, across multiple browsers and 7 multiple operating systems.</p> <p>8 Has the Secretary of State concluded those 9 contracts yet?</p> <p>10 A No, the Secretary of State has not.</p> <p>11 Q Who is the Secretary of State exploring for doing 12 this testing?</p> <p>13 A To my knowledge, the only entities that the 14 Secretary of State has considered with regard to 15 this particular work has been Bosma Enterprises and 16 perhaps SPR to the extent that their work might be 17 relevant under the contractual amendment we 18 discussed earlier.</p> <p>19 Q Will there be a contract for that work or would it 20 be done without a contract?</p> <p>21 A I would presume that the work would be done with a 22 contract. Under state procurement laws a contract 23 is presumed to be required when the value of 24 services or products to be paid for exceeds a very 25 low threshold dollar amount. I approximate by</p>	<p style="text-align: right;">Page 143</p> <p>1 process, which is to mark one's ballot choices, 2 complete the necessary documentation, and e-mail or 3 fax it back to a county election official. Let's 4 talk about .pdf page 8 in this document.</p> <p>5 A Yes, I have at least part of page 8 visible.</p> <p>6 Q Thank you. So I'm highlighting a sentence here two 7 paragraphs above the heading Counting Absentee 8 Ballots that says, A voter with print disabilities 9 must be able to personally mark their own ballot, 10 which would include the voter's use of adaptive 11 technology to complete their ballot.</p> <p>12 Do you see that?</p> <p>13 A Yes, I do.</p> <p>14 Q And that means using screen readers, magnifiers, 15 voice control software, other assistive 16 technologies?</p> <p>17 A Yes, anything that would qualify as adaptive 18 technology as that term is used.</p> <p>19 Q Thank you. Then it goes on to say, The voter must 20 be able to affix their signature or mark to the 21 ballot secrecy waiver. The voter's signature can 22 be affixed to the secrecy waiver using traditional 23 methods like an indelible ink or pencil, or by 24 using a computer mouse or finger on a touch 25 sensitive device.</p>
<p style="text-align: right;">Page 142</p> <p>1 saying \$10,000, but without further examining the 2 procurement laws that might be slightly off. Above 3 that certainly a contract is presumed.</p> <p>4 Q When will these contracts be finalized?</p> <p>5 A I have no information from the Secretary of State 6 regarding when the contracts would be finalized.</p> <p>7 Q Will they be finalized in time to make ballots and 8 optional county-wide voting instructions accessible 9 for the May 2022 primary?</p> <p>10 A As I had indicated in an earlier conversation, 11 believe the earlier deposition, I'm cautiously 12 optimistic that, yes, that can and will occur.</p> <p>13 Q If there will be between 2,500 and 3,000 ballot 14 styles in the May '22 primary, is that enough 15 contractors to get all of those done in the time 16 allotted?</p> <p>17 A Well, I believe that's measuring apples against 18 oranges. Obviously a separate contractor is not 19 needed for each ballot style. There are common 20 styles amongst vendors, amongst voting systems used 21 by counties. There will certainly be an 22 undetermined specific number of ballot styles that 23 have to be developed and accommodated, but I don't 24 think it is impossible to achieve.</p> <p>25 Q So looking at the third stage of the UOCAVA voting</p>	<p style="text-align: right;">Page 144</p> <p>1 Do you see that language?</p> <p>2 A I do.</p> <p>3 Q So the Secretary of State recognizes that indelible 4 ink or pencil refers to paper forms and that's not 5 part of a WCAG-compliant program; right?</p> <p>6 A That's correct.</p> <p>7 Q The computer mouse or finger on a touch sensitive 8 device, is the purpose of that provision to enable 9 a voter to create an electronic signature without 10 having to print the ballot onto paper, sign it like 11 a paper ballot, and then scan it back into an 12 electronic format?</p> <p>13 A Yes, I would think that is part of the purpose. I 14 would understand that clause of the sentence to be 15 illustrative, not exclusive, to say that it would 16 be permissible to use a computer mouse or finger on 17 a touch sensitive device for the tasks that you've 18 described.</p> <p>19 Q Is it the Secretary of State's position that using 20 a computer mouse or finger on a touch sensitive 21 device in order to create a signature complies with 22 WCAG?</p> <p>23 A My understanding would be yes. Again, I do not 24 pretend to have the level of detailed understanding 25 of the WCAG that might be relevant to that</p>

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<p>1 question, but yes, that's my understanding.</p> <p>2 Q Signatures submitted in this fashion on this</p> <p>3 document, will they be compared to a signature on</p> <p>4 file?</p> <p>5 A Yes. The absentee balloting process contemplates</p> <p>6 comparison of a signature made using the absentee</p> <p>7 process with the signature on the Statewide Voter</p> <p>8 Registration System, as one example, or other</p> <p>9 documents that will previously be on file, such as</p> <p>10 the ABS-9 secrecy waiver is one example that's</p> <p>11 referenced in statute.</p> <p>12 Q What's the purpose of comparing the two signatures?</p> <p>13 A The general purpose for comparing the two</p> <p>14 signatures is to ensure the identity of the person</p> <p>15 who has submitted an absentee ballot that purports</p> <p>16 to be from the voter to whom it was sent was, in</p> <p>17 fact, received and marked and returned by the voter</p> <p>18 to whom it was sent.</p> <p>19 Q So this is an identification measure that you're</p> <p>20 using instead of, for instance, DNA or blood</p> <p>21 samples?</p> <p>22 A That would be correct.</p> <p>23 Q Okay. So looking at the next paragraph, it says,</p> <p>24 It is not permissible to affix an electronic copy</p> <p>25 of signature to voter registration forms, absentee</p>	<p>Page 145</p> <p>1 and the envelope not signed by the voter</p> <p>2 themselves. I do not recall any specific examples</p> <p>3 of convictions with regard to the travel board and</p> <p>4 the violation of absentee laws in that context.</p> <p>5 The documented convictions have been those</p> <p>6 involving absentee ballots transmitted by mail.</p> <p>7 Q So regarding the accusations that you mentioned</p> <p>8 before regarding relatives in nursing homes, are</p> <p>9 you aware of any investigative conclusion that, in</p> <p>10 fact, those votes were fraudulent?</p> <p>11 A No. I'm not aware of any determination that was</p> <p>12 made by a court or by a prosecuting attorney to</p> <p>13 bring criminal charges against an individual who</p> <p>14 would have committed fraud in that particular</p> <p>15 scenario.</p> <p>16 Q Did those allegations of fraudulent absentee</p> <p>17 ballots in nursing homes involve voters with print</p> <p>18 disabilities?</p> <p>19 A I have no specific knowledge regarding the</p> <p>20 capabilities or condition of the individual voter</p> <p>21 involved. Ordinarily when the Secretary of State</p> <p>22 receives inquiries or complaints of that sort,</p> <p>23 details are often not furnished by the caller. For</p> <p>24 whatever reason the caller may not wish to share</p> <p>25 those details at least during the initial contact</p>
<p>Page 146</p> <p>1 applications, or combined forms. The only</p> <p>2 exception is a voter using the online portal at</p> <p>3 IndianaVoters.com to submit a voter registration</p> <p>4 form, absentee application, or a combined form. In</p> <p>5 these instances, the voter's signature on record</p> <p>6 with the Indiana Bureau of Motor Vehicles is</p> <p>7 affixed.</p> <p>8 Do you see that?</p> <p>9 A Yes, I do.</p> <p>10 Q Why is the electronic signature not permitted for</p> <p>11 the secrecy waiver?</p> <p>12 A In general, Indiana law provides in</p> <p>13 Indiana Code 3-5-4 that electronic copies of</p> <p>14 signatures are not permitted to be affixed to</p> <p>15 various documents in the election process. The</p> <p>16 exception that's called out in this paragraph is</p> <p>17 likewise reference to that general statute that</p> <p>18 applies throughout the Indiana election code.</p> <p>19 Q As you sit here today, are you aware of any</p> <p>20 documented instances of voter fraud in Indiana that</p> <p>21 were committed using the traveling board?</p> <p>22 A I am certainly familiar with regard to accusations</p> <p>23 that individuals have made that the absentee ballot</p> <p>24 provided by a relative in an assisted living or</p> <p>25 nursing home facility was, in fact, not completed</p>	<p>Page 148</p> <p>1 with the office of the Secretary of State.</p> <p>2 Q So you said that all the documented convictions</p> <p>3 that you're aware of involved absentee by mail</p> <p>4 voting. Does that mean mail through the postal</p> <p>5 mail?</p> <p>6 A Yes. I was referring to the case of former</p> <p>7 State Representative Mike Marshall in</p> <p>8 Jennings County, who was convicted on multiple</p> <p>9 counts of absentee ballot fraud using the mails.</p> <p>10 The absentee ballot envelopes that returned bore</p> <p>11 his signature or a signature not that of the voter.</p> <p>12 The criminal proceeding as it was reported hinged</p> <p>13 upon DNA evidence collected that identified</p> <p>14 Mr. Marshall's DNA on the envelope where he had</p> <p>15 licked them to seal them, and as a result he was</p> <p>16 convicted and sentenced to a year and a half</p> <p>17 imprisonment.</p> <p>18 Q So the questions that I've been asking you have</p> <p>19 been about instances of documented voter fraud.</p> <p>20 What are the ways that voter fraud could be</p> <p>21 documented in Indiana as opposed to just alleged?</p> <p>22 You've mentioned criminal convictions, so certainly</p> <p>23 that's a fairly high-level beyond a reasonable</p> <p>24 doubt determination and documentation of voter</p> <p>25 fraud. Is there any other way that voter fraud</p>

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<p>1 would be documented in Indiana?</p> <p>2 A Yes. There's a requirement involving what's called 3 the voter challenge procedure which can be employed 4 when an individual votes either in person or by 5 absentee ballot. An individual voter or a poll 6 worker in certain circumstances can challenge an 7 absentee ballot, either an application or the 8 ballot itself, as being fraudulent, meaning not 9 executed by the voter but instead by another 10 person.</p> <p>11 With regard to challenges to the ballots 12 themselves, Indiana Code 3-14-5 sets forth a method 13 and a requirement for county election boards to 14 forward copies of these documented challenges to 15 the Indiana Secretary of State, and so there is a 16 resource available to document allegations of 17 absentee voter fraud under that statute.</p> <p>18 Q So the allegations can be documented under that 19 statute. Is there any investigation or outcome 20 that is also documented after the allegations are 21 made?</p> <p>22 A Depending upon the merits of the allegations and 23 the evidence available to support them, the 24 prosecuting attorney of each county also receives 25 copies of the largest percentage of challenges and</p>	Page 149	<p>1 primary ballot they've requested, there's no basis 2 for referral to the prosecuting attorney for those 3 types of challenges because, of course, the general 4 election ballots are secret and there would be no 5 way to have the prosecutor meet the burden of proof 6 in that case.</p> <p>7 I should add there is a different procedure 8 that the county election board can undertake under 9 Indiana Code 3-6-5-31 which allows the county 10 election board to conduct a two-stage hearing first 11 with regard to an allegation of any violation of 12 election laws and then upon giving due process and 13 proper notice to an individual who's the subject of 14 the complaint to conduct a hearing and make a 15 determination whether or not there's been 16 substantial reason to believe that an election law 17 violation has occurred and, if so, to take what the 18 statute calls appropriate action, which it then 19 concludes by saying including referral to a 20 prosecuting attorney.</p> <p>21 So those are the two procedures for referral 22 to a prosecuting attorney that are specified in the 23 election code.</p> <p>24 Q Well, so just to make sure that I have understood 25 you correctly. Is it fair to summarize that you're</p>	Page 151
<p>1 can convene a grand jury to bring forward criminal 2 charges if the prosecutor determines that the 3 allegations have merit.</p> <p>4 I am aware of cases in I believe the 2020 5 general election where there were challenges 6 referred to a prosecuting attorney I believe in 7 Delaware County, if my memory serves me correctly, 8 that the prosecuting attorney subsequently decided 9 did not have sufficient basis to prosecute.</p> <p>10 Q Are all such allegations referred to the 11 prosecuting attorney or only those that receive an 12 initial determination of merit?</p> <p>13 A All challenges are referred to the prosecuting 14 attorney by the county election board without any 15 determination of merit under that particular 16 procedure that I mentioned in Indiana Code 3-14-5.</p> <p>17 The only exception is with regard to what is 18 often referred to as party raving, which occurs in 19 a primary, where individuals of party A may choose 20 to ask for the ballot of party B in order to 21 nominate a weak candidate who can be more easily 22 defeated in the general election. Since Indiana 23 does not permit voters to indicate their party 24 affiliation as part of their registration record, 25 it simply records the history of which party's</p>	Page 150	<p>1 not aware of a documented instance of voter fraud 2 involving fax or e-mail UOCAVA ballots?</p> <p>3 A That is correct. I'm not aware of any documented 4 and, frankly, I'm not aware of any allegation that 5 I've been made aware of either through the 6 Secretary of State or the Election Division.</p> <p>7 Q And are you aware of any documented instance of 8 voter fraud that was facilitated via assistance to 9 voters with disabilities specifically, whether 10 absentee or in person?</p> <p>11 A I'm sorry. Could you repeat the first part of that 12 again?</p> <p>13 Q Certainly. Are you aware of any documented 14 instance of voter fraud involving assistance to 15 voters with disabilities specifically?</p> <p>16 A No, not a documented instance.</p> <p>17 Q Okay. In light of the passage of SEA 398, does the 18 Secretary of State have any plan to change the 19 technical requirements or guidelines for fax 20 machines used in the UOCAVA voting system?</p> <p>21 A No, not to my knowledge.</p> <p>22 Q What about for the e-mail systems?</p> <p>23 A No, not to my knowledge.</p> <p>24 Q So looking at the big picture for implementation of 25 SEA 398 as it relates to voters with print</p>	Page 152

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<p style="text-align: right;">Page 153</p> <p>1 disabilities, I'm going to list what has been done 2 and what is left to work out and I hope I get it 3 right and if I don't you'll tell me. Okay? 4 A I will do my best. 5 Q Thank you. So there's the policy that's been 6 developed which was Exhibit H, and perhaps someday 7 either by amendment to the policy or via education 8 of the counties it will be made known that the 9 policy is supposed to reflect in its form impacts 10 in Section 1.09 that absentee ballots and 11 county-specific instructions need to be made 12 compliant with WCAG. 13 A Yes. 14 Q Great. Also, it can be made clear in Section 1.10 15 that the bill of rights, the absentee ballots, and 16 any local county instructions need to be made 17 compliant with WCAG and have WCAG testing. That's 18 something that is left to be done regarding the 19 policy. Fair to say? 20 A Yes, that's correct. 21 Q So as the policy indicates, certain documents will 22 need to be created and tested for WCAG compliance, 23 including the FVAP-like accessible absentee ballot 24 application form, the bill of rights, and the 25 secrecy waiver. Is that right?</p>	<p style="text-align: right;">Page 155</p> <p>1 planning? 2 A I think your litany involves all of the essential 3 elements. I would think that the Secretary of 4 State's office would be engaged in public 5 information outreach using a variety of media so 6 that voters can be reached directly as much as 7 possible. 8 Q Thank you. That's a really good point. Developing 9 a beautiful system, it would be a shame if no one 10 knew about it and, therefore, no one asked to use 11 it. 12 A That's correct. 13 Q So what plans are being made or are already in 14 place in order to do that public information and 15 outreach? 16 A I am not aware of specific plans with regard to 17 that public education and outreach. Again, this is 18 what I would consider standard operating procedure 19 for the office of Secretary of State when 20 initiatives of this type are developed. There are 21 staff at the Secretary of State who have as their 22 primary task media communications and, of course, 23 in the past the Secretary of State's office has 24 retained advertising firms to best use funding 25 available to reach audiences.</p>
<p style="text-align: right;">Page 154</p> <p>1 A That's correct. 2 Q Guidance and training will need to be provided to 3 counties on how to create ballots and local 4 county-specific instructions so that they comply 5 with WCAG, and that would include updating written 6 materials and also an in-person or non-writing 7 instruction component. Is that right? 8 A Yes, that's correct. 9 Q Great. Contractors to assist the counties with 10 WCAG compliance including testing ballot styles 11 will need to be done. Is that right? 12 A Yes, that's right. 13 Q County boards will need to hold their own trainings 14 with their staff to make sure that everybody is 15 apprised of the law and the related guidance. Is 16 that right? 17 A Yes, that's correct. 18 Q The indianavoters.com needs to be updated in terms 19 of the relevant Voter Registration System election 20 management module. Is that right? 21 A Yes, that's correct. 22 Q Is there anything else that needs to be done in 23 order to implement the provisions of SEA 398 that 24 apply to absentee voters with print disabilities 25 that the Secretary of State is aware of or</p>	<p style="text-align: right;">Page 156</p> <p>1 Q All right. And it's fair to say that the SEA 398 2 process for voters with print disabilities seeking 3 to vote by e-mail will need to have access to 4 computers and the internet in order to complete 5 their ballots privately and independently; right? 6 A Yes, that would be my understanding. 7 Q And they'll have to have access to those either at 8 home or somewhere in a public place like a library? 9 Fair to say? 10 A Yes, that's fair. 11 Q Voters without disabilities who just vote on their 12 paper ballots don't need access to all that 13 technology; right? 14 A No, that's correct. They obviously have an 15 alternative that will function for them. 16 Q And they probably don't need to leave home in order 17 to access the technology that's necessary to vote; 18 right? 19 A I would assume that's generally true. I don't mean 20 to take your question too literally to say that 21 they will go out to the mailbox or wherever else, 22 but yes, they can fundamentally do what they need 23 to do without leaving home. 24 Q Will the SEA 398 process go live before the May '22 25 primary?</p>

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<p>1 A I repeat again my cautious optimism, but it's based 2 on Indiana's demonstrated history of complying with 3 election law requirements. Indiana was able to 4 have a successful Statewide Voter Registration 5 System implemented in December 2005 which has 6 successfully functioned since then under a very 7 challenging schedule.</p> <p>8 Indiana also was able to eliminate lever 9 machines and punch cards before 2006, and meaning 10 no disrespect to the good citizens of other states, 11 Wyoming in particular with voter registration 12 systems and the great state of New York with regard 13 to lever machines, were not quite so successful in 14 meeting those deadlines under the Help America Vote 15 Act.</p> <p>16 Q Sir, I am the target demographic of that 17 remark (laughing).</p> <p>18 A (The witness laughed.)</p> <p>19 Q Also the Department of Justice is the target 20 demographic of that remark (laughing).</p> <p>21 A Yes. But I do say that in all sincerity that 22 Indiana in the past during my tenure, with credit 23 to others who certainly devoted considerable time 24 and energy and resources to it, did all that was 25 humanly possible to meet those deadlines.</p>	<p>Page 157</p> <p>1 an RAVBM is an HTML-based system for marking a 2 ballot. Fair to say?</p> <p>3 A That would be my understanding.</p> <p>4 Q Thank you. And RAVBMs have been used in other 5 states; right?</p> <p>6 A Yes, that's my understanding.</p> <p>7 Q Good. Some are used for an all online process of 8 submitting a ballot where a voter signs into an 9 HTML-based system, completes the ballot, and 10 submits it electronically, whereas other states and 11 jurisdictions require the voter to, again, go 12 online, download the ballot, fill it out in an 13 HTML-based system, and then print it, sign it, and 14 mail it in.</p> <p>15 So the Secretary of State understands that 16 there's electronic submission of ballots through 17 RAVBMs but also print and mail submission of 18 ballots with RAVBMs depending on the underlying 19 choices of the jurisdiction. Does that make sense?</p> <p>20 A It makes sense. I believe that's correct. I'm not 21 able to confirm that that is, in fact, the case, 22 but I believe it is.</p> <p>23 Q Has the Defendant Secretary of State ever 24 considered using an RAVBM in Indiana?</p> <p>25 A Not to my knowledge.</p>
<p>Page 158</p> <p>1 Q All right. So the next set of questions that I 2 have for you is about something that we are calling 3 remote accessible vote by mail tools or RAVBMs. 4 For this I'm thinking of tools that go by a number 5 of names. There are commercial alternatives, like 6 Democracy Live and Five Cedars. Certain states 7 have also programmed and implemented their own 8 state-specific RAVBMs. For instance, the State of 9 Maryland makes one available for other states to 10 adopt. New Mexico has done that.</p> <p>11 Is the Defendant Secretary of State familiar 12 with what an RAVBM is?</p> <p>13 A I believe the Secretary of State's office is 14 generally familiar with what an RAVBM is.</p> <p>15 Q So can you explain that, please.</p> <p>16 A Well, by that I mean the Secretary of State's 17 office participates in national organizations, such 18 as the National Association of Secretaries of 19 State, and receives information from entities like 20 the U.S. Election Assistance Commission in which 21 RAVBMs would be discussed and mentioned, and so, 22 yes, I would assume the Secretary of State's office 23 familiarity with the basic functioning of that 24 system.</p> <p>25 Q Well, and some of the details of this would be that</p>	<p>Page 160</p> <p>1 Q Why not?</p> <p>2 A I would think because, again, I don't know that the 3 office of the Secretary of State has been presented 4 with either constituent interest or a legislator 5 interest in pursuing that particular mode of 6 voting. I am aware that some of the entities that 7 you mentioned, like Democracy Live, have made their 8 presence known at conferences of the organizations 9 I've referenced and may have contacted the office 10 of the Secretary of State at different times.</p> <p>11 I have to note that in the period that we're 12 talking about here there have been multiple 13 individuals who've served not only as Secretary of 14 State but as deputies and administrators who may 15 have had consideration that I would be unaware of 16 at this point.</p> <p>17 Q Who would know?</p> <p>18 A It would have to be those individuals. I 19 mentioned, for example, Brandon Clifton who until 20 recently was Deputy Secretary of State. There are 21 several individuals who have served as Secretary of 22 State since the enactment of the Help America Vote 23 Act. To name them, they are Todd Rokita, who 24 currently serves as attorney general; 25 Charlie White, who was convicted of felony vote</p>

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<p>1 fraud and removed from office and succeeded by 2 Jerry Bonnet; who then was subsequently succeeded 3 by Connie Lawson, who resigned earlier this year 4 and was replaced by the successor appointed by 5 Governor Holcomb, current Secretary Holli Sullivan. 6 So any of those individuals I mentioned during 7 their time at the Secretary of State's office might 8 very well have had the type of inquiry or 9 discussion that you were referencing.</p> <p>10 Q If a ballot is loaded into an RAVBM and presented 11 in an HTML interface, it's the job of the RAVBM to 12 comply with the WCAG standards, not the county 13 boards of elections' job; right?</p> <p>14 A That's my understanding, yes.</p> <p>15 Q So if a county board decided to use an RAVBM -- 16 assuming that the county board had that power, 17 which let's leave aside whether they do -- they 18 wouldn't have to make their own ballot styles 19 accessible under their own power or through their 20 own contracts; right? That's part of what the 21 RAVBM would do for them; is that right?</p> <p>22 MS. ABSHIRE: Objection. Calls for 23 speculation.</p> <p>24 A Again, making the assumption that the system had 25 been properly certified in accordance with Indiana</p>	<p>Page 161</p> <p>1 THE REPORTER: I can read back what I got. I 2 think I lost you in the middle.</p> <p>3 MS. BRANDT-YOUNG: Okay.</p> <p>4 THE WITNESS: My apologies.</p> <p>5 (The requested material was read back by the 6 reporter.)</p> <p>7 THE WITNESS: And I believe I responded yes to 8 that question, so if we're caught up, then fine.</p> <p>9 MS. BRANDT-YOUNG: I think the question after 10 that was not sufficiently different to be 11 illuminating, so let's just move on.</p> <p>12 THE WITNESS: All right.</p> <p>13 THE REPORTER: Sorry if I didn't go back far 14 enough.</p> <p>15 MS. BRANDT-YOUNG: I think you might have gone 16 back too far, but never mind, Michele. It's 17 perfectly fine. We got a question. We got an 18 answer. I was happy to have the question read 19 back.</p> <p>20 Q So I think where we're going here is the point is 21 that the RAVBM is responsible for WCAG compliance 22 of the ballot and not the county board of elections 23 if you use an RAVBM; right?</p> <p>24 A Yes, that is correct.</p> <p>25 Q Thank you. In fact, some RAVBMs work particularly</p>
<p>Page 162</p> <p>1 law, yes, that would be my understanding that the 2 system would have the ability to make the ballot as 3 you described.</p> <p>4 Q Indeed. And that's frankly part of the point of an 5 RAVBM; right? They've already made them WCAG 6 compliant and can load in ballot styles of many 7 kinds in an interface that already works with 8 assistive technology and has been tested across a 9 broad variety of browser and hardware and software 10 combinations; is that right?</p> <p>11 MS. ABSHIRE: Objection. Compound and calls 12 for speculation.</p> <p>13 MS. BRANDT-YOUNG: I'm sorry, Courtney. I was 14 not able to hear that. Would you mind projecting 15 into the microphone for me?</p> <p>16 MS. ABSHIRE: Sorry. Calls for speculation 17 and compound.</p> <p>18 MS. BRANDT-YOUNG: Thank you.</p> <p>19 A I'm sorry to ask you to repeat the question, but in 20 the flurry of objections I think I lost track a 21 little bit. If you would indulge me, I'd 22 appreciate it.</p> <p>23 Q Certainly.</p> <p>24 MS. BRANDT-YOUNG: Michele, are you able to 25 read that back?</p>	<p>Page 164</p> <p>1 seamlessly with particular voting systems. For 2 instance, ES&S works really easily with 3 Democracy Live; right?</p> <p>4 MS. ABSHIRE: Objection. Calls for 5 speculation.</p> <p>6 A I have no knowledge with which to answer that 7 question, not having seen the interaction with ES&S 8 equipment and any RAVBM, so I can't offer an 9 informed opinion.</p> <p>10 Q When voters are voting on paper ballots, and in 11 particular absentee paper ballots that they're 12 filling out with a pen at home, is over-voting or 13 under-voting ever a problem?</p> <p>14 A Yes, it certainly can be.</p> <p>15 Q Can you explain for the record what over- and 16 under-voting are?</p> <p>17 A Certainly. Over-voting is perhaps the easiest to 18 visualize, and that is where a ballot ordinarily 19 contains instructions telling the voter to vote for 20 no more than a certain number, usually one, 21 candidate for a particular office or nomination. 22 There may be multiple candidates listed that the 23 voter could choose between. The voter disregards 24 the instruction or does not read the instruction 25 and proceeds to mark for more than the allowed</p>

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<p style="text-align: right;">Page 165</p> <p>1 number, two in the scenario that I just gave an 2 example of, and the result can be that the voter's 3 ballot for that particular office is void, that no 4 vote is counted for either candidate.</p> <p>5 The under-vote is the converse of that, the 6 voter is advised that they may vote for up to so 7 many candidates, typically one, in a given race but 8 for some inexplicable reason the voter chooses not 9 to vote for the maximum number allowed. It's 10 impossible to determine whether the voter felt that 11 no candidate was deserving of their vote or if the 12 voter overlooked the race or was undecided and 13 unable to choose and decided to move on. But in 14 that case, of course, no vote would be counted for 15 any candidate in that race.</p> <p>16 Q Do I understand correctly that when voters vote on 17 voting machines that the machine can give them an 18 alert telling them that they have over- or 19 under-voted and give them a chance to correct that 20 problem?</p> <p>21 A Yes, generally speaking. The methodology varies a 22 bit according to the type of voting system used. 23 There are direct record electronic voting systems 24 that make it physically impossible for a voter to 25 over-vote, in that it will not recognize the touch</p>	<p style="text-align: right;">Page 167</p> <p>1 scroll to at least view all of the pages that make 2 up a ballot before finalizing their ballot by 3 hitting the cast vote button. And so, again, I 4 would feel confident in saying, yes, that an 5 HTML-based type ballot of the sort you described 6 could be made available to a voter.</p> <p>7 Q And generally preventing mistakes in that way is a 8 good thing; right?</p> <p>9 A Yes, it is.</p> <p>10 Q So if an RAVBM were run by an outside company, a 11 vendor like Democracy Live or Five Cedars, is it 12 the Secretary of State's position that such a 13 system would qualify as a voting system that has to 14 be certified under Indiana law?</p> <p>15 A Yes. That's my understanding of the Secretary's 16 position regarding the requirements under Indiana 17 law for all voting systems, which has a broad 18 definition under the Help America Vote Act, to 19 include the technology that you're describing.</p> <p>20 Q Does it make any difference that an RAVBM doesn't 21 count the votes, all it does is assist people with 22 filling out their ballots and perhaps submitting 23 those ballots?</p> <p>24 A In my opinion, no, it does not make a difference, 25 in that the definition of voting system is very</p>
<p style="text-align: right;">Page 166</p> <p>1 of the voter on a candidate's name in a particular 2 race without requiring the voter to first undo a 3 choice that then would allow the voter to proceed 4 without an over-vote. There are other types of 5 voting systems that will give a visual warning, and 6 perhaps when headsets are used a verbal warning as 7 well, that a voter has over-voted in a particular 8 case or under-voted would be typical.</p> <p>9 And so, yes, those types of safety net 10 devices, if you will, are features among many types 11 of voting systems that vary according to the model.</p> <p>12 Q But those are features that are lacking in a paper 13 absentee ballot; right?</p> <p>14 A Yes, that is correct. There's nothing comparable 15 with regard to a paper absentee ballot.</p> <p>16 Q Is it fair to say that in an HTML-based RAVBM 17 system you could create a voting experience where 18 every race is a single web page such that you can't 19 go on to the next race until you've submitted a 20 correct vote on the race you're in?</p> <p>21 MS. ABSHIRE: Objection. Calls for 22 speculation.</p> <p>23 A Yes, that's my understanding. I would add that in 24 the other types of voting systems I referenced, the 25 electronic voting systems, a voter is required to</p>	<p style="text-align: right;">Page 168</p> <p>1 broad and includes individual components that are 2 necessary to complete the ballot casting process. 3 It does by general consensus exclude obviously a 4 traditional hand count paper ballot and generally 5 is not considered to include electronic poll books, 6 but it is intended to be read and interpreted 7 broadly, in my understanding.</p> <p>8 Q If Indiana programmed its own RAVBM from 9 indianavoters.com, as other states have done, for 10 part of or all of the ballot marking and submission 11 process, would that be a voting system that 12 requires certification under Indiana law, in the 13 opinion of the Secretary of State?</p> <p>14 A In the opinion of the Secretary of State, I don't 15 know that that specific question has been 16 addressed. But I would state that the requirements 17 for voting system certification have been very 18 strictly enforced in Indiana. A couple of vendors, 19 including Election Systems & Software, have 20 received six-figure fines for marketing and using 21 uncertified components of voting systems, specific 22 software upgrades. I should add Microvote was 23 likewise subject to a six-figure fine from the 24 State in that regard.</p> <p>25 The State generally has left the development</p>

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<p style="text-align: right;">Page 169</p> <p>1 of voting systems to private enterprise as opposed 2 to performing that as a governmental function. So 3 I have no definite answer with regard to the 4 Secretary of State's position in that regard except 5 to say that past practice indicates that the 6 statute would be construed strictly to require any 7 entity, including the State, to undergo a testing 8 and certification process for use as a voting 9 system.</p> <p>10 Q When in the past has the State developed a product 11 that had to undergo testing for use as a voting 12 system?</p> <p>13 A I do not recall any case where that has occurred.</p> <p>14 Q The e-mail and fax systems that are used for UOCAVA 15 voters are not certified as voting systems; is that 16 right?</p> <p>17 A That is correct.</p> <p>18 Q Why not?</p> <p>19 A In part because no one has applied for those items 20 to be certified. But in a more practical response 21 to your question, again, I don't know that there's 22 been any either legislative determination made 23 through the statutory process that requires it or 24 any vendor who's acted out of abundance of caution 25 and said I'd rather not have the \$300,000 fine that</p>	<p style="text-align: right;">Page 171</p> <p>1 A Again, no, not to my knowledge.</p> <p>2 Q So as far as you know, the Secretary of State's 3 office hasn't considered that at all; is that 4 right?</p> <p>5 A That's correct.</p> <p>6 Q Same question as to whether the Secretary of 7 State's office has ever made an analysis that using 8 an RAVBM would constitute an undue financial 9 burden. Are you aware of any such determination?</p> <p>10 A No, I am not.</p> <p>11 Q So are you aware of any meetings, conversations in 12 e-mail or any other format, where that's been 13 discussed?</p> <p>14 A No, I am not.</p> <p>15 Q As far as you know, that issue hasn't been 16 considered?</p> <p>17 A No, the issue has not been considered except 18 obviously in the context of this litigation.</p> <p>19 Q So the issue of whether an RAVBM would be an undue 20 financial burden has been considered in the context 21 of this litigation?</p> <p>22 MS. ABSHIRE: Objection. Calls for work 23 product and attorney-client privilege.</p> <p>24 MS. BRANDT-YOUNG: I'm sorry, Courtney. Can I 25 get you to come around?</p>
<p style="text-align: right;">Page 170</p> <p>1 the other folks got so I'll err on the side of 2 caution and seek to have it certified.</p> <p>3 Q So given that use of an RAVBM has never been 4 seriously considered by the Secretary of State, has 5 anyone ever determined that using an RAVBM in 6 Indiana would constitute a fundamental alteration 7 in the basic nature of voting?</p> <p>8 A No, to my knowledge, no one has made that 9 determination.</p> <p>10 Q Are you aware of any meetings or conversations in 11 any format, anything in writing or e-mail or any 12 other format, where making such a determination was 13 considered?</p> <p>14 A No, I am not.</p> <p>15 Q So you're not aware of the issue being considered 16 in the Secretary of State's office at all; is that 17 right?</p> <p>18 A That's correct.</p> <p>19 Q Likewise, has the Secretary of State's office ever 20 done any analysis to determine that use of an RAVBM 21 would constitute an undue administrative burden for 22 the State?</p> <p>23 A No, not to my knowledge.</p> <p>24 Q Are you aware of any meetings, conversations, 25 e-mails, other communications on that topic?</p>	<p style="text-align: right;">Page 172</p> <p>1 MS. ABSHIRE: I'm sorry. I said objection. 2 Work product and attorney-client privilege.</p> <p>3 THE WITNESS: She still is having difficulty 4 hearing.</p> <p>5 MS. ABSHIRE: I'm sorry, Christina. Objection 6 as to it calls for work product and attorney-client 7 privileged communication. Is that better?</p> <p>8 MS. BRANDT-YOUNG: I understand. Is the 9 witness permitted to answer?</p> <p>10 MS. ABSHIRE: To the best of your knowledge.</p> <p>11 A To the best of my knowledge, no. No, I have no 12 specific recollection of that.</p> <p>13 Q All right.</p> <p>14 MS. ABSHIRE: I'm sorry to interrupt. Can we 15 take a very quick bathroom break?</p> <p>16 MS. BRANDT-YOUNG: Now is an outstanding time 17 for that. Should we take five minutes, 18 ten minutes?</p> <p>19 MS. ABSHIRE: Five is plenty for me, but if 20 you need longer that's fine.</p> <p>21 MS. BRANDT-YOUNG: Five sounds great. Thank 22 you very much.</p> <p>23 MS. ABSHIRE: Thank you.</p> <p>24 (A brief recess was taken.)</p> <p>25 Q Let's turn to Exhibit B, which is the 30(b)(6)</p>

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<p>1 deposition notice, and I will share the screen here 2 in a minute.</p> <p>3 All right. Can you see the screen, sir?</p> <p>4 A Yes, I can.</p> <p>5 Q Wonderful. We're going to look at Topic 5, 6 Defendant's budgets and budgets for 7 disability-related access.</p> <p>8 Do you see that?</p> <p>9 A Yes, I do.</p> <p>10 Q Who at the Secretary of State is the most 11 knowledgeable person on this topic?</p> <p>12 A I would identify one particular individual with 13 regard to budgets as Jerry Bonnet as general 14 counsel. There are others who have significant 15 knowledge regarding the budget process.</p> <p>16 Q Is there anyone at the Secretary of State's office 17 who is not an attorney role who you think has good 18 knowledge about this topic?</p> <p>19 A I hesitate because an individual I might have named 20 has recently left employment at the Secretary of 21 State's office and so I'm not able to refer to him. 22 Generally with regard to budget matters I would 23 reference Christina Stanton. I should also 24 reference Jay Phelps, who I mentioned earlier who's 25 a relatively recent addition to the Secretary of</p>	<p>Page 173</p> <p>1 found this file, which is called 2 23-Summary-By-Agency-As-Passed.pdf.</p> <p>3 So with that background information, do you 4 know who at the State Budget Agency prepares this 5 document?</p> <p>6 A No, I do not know which agency staffer prepares it. 7 The State budget director is named Zachary Jackson. 8 We have a particular individual analyst who changes 9 periodically as he's assigned to different 10 agencies -- his first name is Sola, S-o-l-a, and 11 I'm temporarily spacing his last name -- but that 12 would be the individual within the budget agency 13 that I think is most responsive to your question.</p> <p>14 Q Given where we obtained this document from, from 15 the State Budget Agency's website, do you have any 16 reason to think that it's not accurate?</p> <p>17 A Not from what you have said. I note that we have 18 had some difficulties in the past with items 19 appearing on the budget agency's page that did not 20 reflect what we might have presumed that they 21 reflected, but I think we can rely on this so far 22 as we have knowledge about it.</p> <p>23 Q Okay. Well, let's hang on for a second. Can we go 24 to .pdf page 2 of this document, please. If you 25 scroll down a bit, there under line 00040 are what</p>
<p>1 State's staff.</p> <p>2 Q But you're prepared to testify about this topic 3 today?</p> <p>4 A I am, to the best of my ability.</p> <p>5 Q Great. So we're going to stop the sharing of that 6 document.</p> <p>7 MS. BRANDT-YOUNG: We're going to mark another 8 document as Exhibit I. This is the agency budget 9 summary, and the file for that is named AP 2019 B 1 10 2 1 Agency Summary.</p> <p>11 A I see a document titled Agency Summary but I do not 12 see any reference to the Secretary of State.</p> <p>13 Q Hang in there with me for a moment.</p> <p>14 All right. Do you see a document via the 15 screen share as well?</p> <p>16 A Yes. I'm seeing the same document on both screens.</p> <p>17 Q Good. So as an officer of the court I'm going to 18 represent to you that this file was downloaded and 19 obtained in the following way. We went to the 20 Indiana State Budget Agency website. I chose a 21 link called 2021-2023 budget. From the page that I 22 got there, I clicked on another link that said 23 2021-2023 as passed budget. Then I clicked on 24 another link under a heading called 25 B. Appropriations Overview/Agency Summary, where I</p>	<p>Page 174</p> <p>1 appear to be budget numbers for the Secretary of 2 State. Do you see that?</p> <p>3 A Yes, I do.</p> <p>4 Q Do you have access to any Secretary of State budget 5 document that you have reason to think is more 6 accurate than this one as to the total amount 7 that's allocated to the Secretary of State in the 8 State budget?</p> <p>9 A No, not to any other document that I would believe 10 is more accurate. With regard certainly to the 11 General Fund information, that appears to be 12 accurate with what I've seen on other documents and 13 other websites. I don't have the same level of 14 confidence with regard to the Dedicated Funds. 15 That's not something that ordinarily appears in the 16 biennial budget bill. So with that information, I 17 think the answer's yes.</p> <p>18 Q Do you have any reason to think that the numbers 19 here are not correct?</p> <p>20 A No, I have no reason to think that.</p> <p>21 Q All right. So looking at the Secretary of State's 22 budget here, the General Fund numbers involve 23 approximately \$6.2 million for each of two years. 24 To your knowledge, how much of that is for 25 election-related activities of the Secretary of</p>

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<p>1 State?</p> <p>2 A With regard to State funding, a relatively small 3 percentage. I know that approximately \$1.2 million 4 of that is used for operating expenses and general 5 office work, with a significant portion of the 6 remainder divided between the business services 7 division and the securities division of the 8 Secretary of State's office.</p> <p>9 The Secretary of State's office also has 10 responsibilities regarding regulation of auto 11 dealerships, notaries public, of which there are 12 100,000 in Indiana, and of all things precious 13 metal dealers, and so the percentage of funding 14 ordinarily available in the Secretary of State's 15 budgets for elections is a relatively small 16 percentage. My recall on the 2019 budget, there 17 was a \$10 million appropriation, as I recollect it, 18 for election security, but that is the only 19 specific call-out for elections that I'm aware of.</p> <p>20 Q So looking at the Dedicated Funds number here, it 21 looks like year one is \$17.5 million, whereas for 22 year two it's just \$7.5 million. Is that 23 \$10 million for election-related activities, what 24 you were just discussing, is that why there's a 25 \$10 million difference here?</p>	<p>Page 177</p> <p>1 of the Secretary of State budget or is it separate 2 from the Secretary of State's budget?</p> <p>3 A It is separate from the Secretary of State's 4 budget, as indicated by the initial five-digit 5 numerical prefix, 00063, that identifies the 6 business unit, as it's called, which is separate 7 from 00040 for the Secretary of State. So for this 8 purpose Election Division is not part of the 9 Secretary of State's budget.</p> <p>10 I will add, if I may, I'm a little concerned, 11 again, to see the reference to Federal Funds at 12 \$6,475, which we had discussed previously as not 13 being reflective of funds actually received but an 14 accounting holding designation used internally by 15 the budget agency. So it does give me some pause 16 in the reliability of the other numbers, but I have 17 no reason to think that they're significantly 18 inaccurate.</p> <p>19 Q So is it fair to say that you have confidence in 20 the General Fund and the Dedicated Funds numbers 21 for the Indiana Election Division?</p> <p>22 A In general, yes.</p> <p>23 Q And 100 percent of these funds are for 24 election-related activities; is that right?</p> <p>25 A Yes, in the broad sense of that word. There are</p>
<p>Page 178</p> <p>1 A I cannot be certain of that fact, having not seen 2 this document before, but I think that's a fair 3 inference and a likely possibility, yes.</p> <p>4 Q And in the General Fund how much of that would be 5 for disability-related access?</p> <p>6 A I'm not aware of any item in the General Fund that 7 is earmarked or designated specifically for 8 disability access. There are certainly programs 9 that are conducted using federal funds that are not 10 included in this budget obviously. So to my 11 knowledge, the only category that that would fit 12 would be the election security \$10 million 13 appropriation I referenced earlier.</p> <p>14 Q And then in the Dedicated Funds how much of that 15 money in year one or year two might be for 16 disability-related access?</p> <p>17 A My answer to the first question was really meant to 18 encompass both, to say that I'm not aware of 19 anything specifically earmarked or designated as a 20 budget for a program regarding voters with 21 disabilities or individuals with disabilities.</p> <p>22 Q Let's scroll on down to page 4, where at the top 23 you'll find the Indiana Election Division.</p> <p>24 A Yes, I see that.</p> <p>25 Q Great. So is this funding that's denoted here part</p>	<p>Page 180</p> <p>1 approximately \$1,200,000 for personnel and 2 operating expenses that any agency would require to 3 carry out its functions, but beyond that, the 4 remainder would be for election purposes.</p> <p>5 Q Are you able to say how much of this funding is 6 specifically for disability-related access?</p> <p>7 A I'm not able to identify a specific figure. There 8 are elements of the General Fund in particular that 9 are expended for purposes related to voters with 10 disabilities. Roughly one-half of the General Fund 11 monies is for the operation of the Statewide Voter 12 Registration System and another significant 13 percentage of \$2.5 million over the course of the 14 biennium is for voter list maintenance mailings, 15 which, again, may have some tangential impact on 16 voters with disabilities but nothing specific in 17 that regard.</p> <p>18 Q All right. I believe we're done with this 19 document. Let's go back to Exhibit B, again on 20 .pdf page 6. Let me know when you see that.</p> <p>21 A Certainly. Yes, I see the reference.</p> <p>22 Q So federal sources of funding for Defendant. Who 23 at the Secretary of State is the most knowledgeable 24 person about this topic?</p> <p>25 A There would be a couple of individuals. Again, I</p>

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<p>1 would refer to Jerry Bonnet as probably the single 2 most familiar person with the sources of federal 3 funding.</p> <p>4 Q Anyone who doesn't fulfill the role of an attorney 5 who also knows about federal sources of funding?</p> <p>6 A Yes. Molly Timperman, T-i-m-p-e-r-m-a-n, who 7 serves as the Help America Vote Act administrator.</p> <p>8 Q And you're prepared to discuss this on behalf of 9 the Secretary of State today; isn't that right?</p> <p>10 A Yes, I am, to the best of my ability.</p> <p>11 Q Great. So you mentioned that Molly Timperman is 12 the HAVA administrator. Can you explain what that 13 is?</p> <p>14 A Yes. The Help America Vote Act administrator 15 position was first established when Indiana 16 received funds under the Help America Vote Act to 17 deal with a number of issues, primarily related to 18 the recordkeeping and EAC audit responsibilities 19 that follow upon the transfer and expenditure of 20 those funds.</p> <p>21 The Help America Vote Act administrator is 22 also responsible for providing assistance to 23 counties with regard to some aspects of the use of 24 the Statewide Voter Registration System that, of 25 course, was funded, along with a State match, by</p>	<p>Page 181</p> <p>1 available for the general improvement of federal 2 elections.</p> <p>3 Q Would Indiana consider applying for that money in 4 the future?</p> <p>5 A I would hope so.</p> <p>6 Q That sounds like fairly unrestricted funding. Am I 7 wrong?</p> <p>8 A No, you are correct. The federal Section 101 money 9 is usable for a variety of purposes, wide variety 10 of purposes. It does require work by both the 11 State of Indiana and by the U.S. Election 12 Assistance Commission. And in fairness to folks 13 who have moved on to other positions, I should say 14 that that effort was hindered by the EAC acting 15 without a quorum of commissioners for several years 16 and some turmoil at the staff level, and so I have 17 to say there was some mitigating circumstances 18 there.</p> <p>19 MS. BRANDT-YOUNG: All right. So let's have 20 the record reflect that we're marking another 21 document as Exhibit J. This is ACBI 454-470.</p> <p>22 Q Sir, can you see that?</p> <p>23 A Yes. I can see the top half of the page.</p> <p>24 Q Great. Please feel free to open your own local 25 copy of that, assuming that it's the only document</p> <p>Page 182</p> <p>1 federal dollars. An example might be the 2 production of what is called a precinct key for 3 each county so that the county ensures that the 4 correct ballot style is provided in each precinct.</p> <p>5 Those are some representative duties. Some 6 other duties have included grant administration 7 using Health and Human Services funds under 8 Section 251 before those funds were exhausted. I 9 think that would be a fair description of the job 10 description of the Help America Vote Act 11 administrator.</p> <p>12 Q Do I understand correctly that there's 13 approximately \$25,000 in HAVA funding that Indiana 14 could submit an application for but so far has not?</p> <p>15 A Yes, that's my understanding. It is, as I recall, 16 outstanding for several years, in that I had worked 17 with a previous administration to attempt to secure 18 the matching fund required to obtain the \$25,000 in 19 federal funds but was unable to persuade those 20 involved in the prior administration that it was of 21 sufficient priority for that amount of money to go 22 forward.</p> <p>23 Q So remind me again. What was that \$25,000 24 potentially available for?</p> <p>25 A I believe that was Section 101 money, so it was</p>	<p>Page 183</p> <p>1 you can see on the computer, and scroll through it 2 until you have a good sense of what this document 3 is.</p> <p>4 A Yes. This is the 2020 Grant Expenditure Report 5 issued by the U.S. Election Assistance Commission 6 in July of 2021 as it indicates.</p> <p>7 Q Great. So let's go to .pdf page 4, please, and 8 then scroll back up a little bit so we can see the 9 title of the table that we're looking at.</p> <p>10 A Yes, I see the title of Table 1.</p> <p>11 Q So this is entitled Section 101 HAVA Funds as of 12 September 30, 2020. And what are HAVA Section 101 13 funds?</p> <p>14 A HAVA Section 101 funds are funds that are permitted 15 to be used for any purpose in general that 16 contributes to the more efficient administration of 17 the federal election process. Their use is 18 restricted barring them from being used for purely 19 local elections, for example, but they can include 20 a wide variety of categories that might also be 21 covered under other sections of HAVA.</p> <p>22 Q Looking there at the Indiana line, it says that 23 Indiana has received \$6.2 million as an amount 24 received, \$1 million as interest earned, and 25 \$7.2 million total expenditures. The U.S. Election</p>
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<p style="text-align: right;">Page 185</p> <p>1 Assistance Commission believes that there is a 2 balance of funds and interest in the total of 3 \$5,689. Do you see that row, sir? 4 A I do. 5 Q Does this \$7.2 million in total expenditures 6 reflect the total that Indiana has received over 7 the lifetime of HAVA? 8 A No. Indiana over the total lifetime of HAVA has 9 received approximately \$71 million, according to 10 the most recent Vote Indiana Plan as amended in 11 2009. That would not reflect some additional HAVA 12 election security payments, of which I believe 13 there were two. And the total amount when amount 14 received and interest earned is added equals 15 approximately \$8 million, which I believe were 16 received in 2018 and 2020. There may be some 17 discrepancy because we're using different fiscal 18 years between the State and the Federal Government, 19 but that's my reflection of the overall amount 20 received and the particular approximately 21 \$8 million reflected in this report for the period 22 indicated in 2020. 23 Q So do I understand you correctly that the State of 24 Indiana has received \$8 million in each of 2018 and 25 2020 approximately in HAVA funding?</p>	<p style="text-align: right;">Page 187</p> <p>1 ready. 2 A Yes, I can see the title of the table. 3 Q Great. So this title reads that it is about 4 Section 101 CARES Act Funds as of December 31, 5 2020. Do you see that? 6 A Yes, I do. 7 Q Great. So scrolling down to Indiana's line, it 8 says here that the amount received is about 9 \$8 million, the interest earned is \$6,445, and the 10 amount received also reflects the total 11 expenditures and the interest earned is the same as 12 the balance of funds and interest. Did you follow 13 that and do you agree with it? 14 A Yes, I did follow that trail and I agree with the 15 conclusion. 16 Q All right. 17 A I would note that in this case the CARES Act 18 funding expired December 31 of 2020 and as a result 19 the \$6,445 in interest was returned to the 20 Federal Government due to the expiration of the 21 grant. 22 Q Is the Secretary of State the administrator of this 23 money under the CARES Act? 24 A Yes, that's correct. 25 Q What was the CARES Act funding used for?</p>
<p style="text-align: right;">Page 186</p> <p>1 A Yes, that's my understanding. 2 Q And the Secretary of State is the administrator of 3 that funding; is that correct? 4 A The Secretary of State is designated by statute as 5 the administrator of the Election Assistance Fund 6 in Title 3. 7 Q And does any of that funding flow to or get used by 8 the Indiana Election Division or Commission? 9 A No. Not certainly by the Indiana Election 10 Commission, and no, to my knowledge, no funding 11 flowing to the Indiana Election Division. 12 Q Does any of it flow to the county boards of 13 elections or any county-level entity? 14 A Yes, it can and has. Primarily with regard to 15 election security items, ranging from the 16 installation of voter verifiable paper audit 17 trails, VVPATs, for counties which use direct 18 record electronic systems that do not have those 19 features. The funds also flow to the counties with 20 regard to upgrades for the poll books. I think 21 that's the main flow to the counties now that the 22 Health and Human Services funds have been exhausted 23 under Section 251. 24 Q Let's head to .pdf page 12 and, again, back up to 25 the title of the table. Let me know when you're</p>	<p style="text-align: right;">Page 188</p> <p>1 A The CARES Act funding was used for a variety of 2 purposes related to issues arriving from the COVID 3 pandemic. Personal protective gear for poll 4 workers, hand sanitizers for voters, protective 5 measures at the polling place were a significant 6 portion of funds expended. Beyond that, publicity 7 given that I referenced earlier in our discussion 8 with regard to our unprecedented change of our 9 primary date from May 2020 to June 2020. 10 I may want to think about that for a moment. 11 But particularly the publicity regarding the June 12 primary. Oh, now it's coming to me, yes. We 13 assisted counties in coping with postage costs due 14 to the increased volume in absentee ballot voting 15 by mail, the printing and the acquisition of letter 16 openers and other items to accommodate the 17 unprecedented level of absentee voting by mail were 18 the principal items of expenditure of that fund. 19 Q So the Secretary of State was the administrator of 20 this funding and some of this funding clearly 21 flowed to the counties; is that right? 22 A That's correct. 23 Q Did the Indiana Election Division have access to 24 any of that money? 25 A No, the Indiana Election Division did not have</p>

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<p>1 access to the money.</p> <p>2 I would note that the Indiana Election</p> <p>3 Division under the Help America Vote Act plan is</p> <p>4 required to be involved in consenting to the</p> <p>5 expenditure of the funds proposed by the</p> <p>6 Secretary of State, so the Election Division was</p> <p>7 involved but was not a recipient.</p> <p>8 Q And what about the Election Commission?</p> <p>9 A No. The Election Commission had no involvement</p> <p>10 other than issuing an order that rescheduled the</p> <p>11 May 2020 primary to June 2020 but nothing with</p> <p>12 regard to the funds themselves.</p> <p>13 Q Was any of the CARES Act funding used on traveling</p> <p>14 boards generally?</p> <p>15 A Not to my knowledge.</p> <p>16 Q All right. Let's take down that document. Let's</p> <p>17 go back to Exhibit B, which is our 30(b)(6) notice.</p> <p>18 As you should be able to see on the last page of</p> <p>19 the notice here, Topic 9 is, The factual bases for</p> <p>20 all affirmative defenses claimed by Defendant.</p> <p>21 Do you see that, sir?</p> <p>22 A Yes, I do.</p> <p>23 Q And who at the Secretary of State's office is the</p> <p>24 most knowledgeable person about this topic?</p> <p>25 A I would say Jerry Bonnet in his capacity as general</p>	<p>Page 189</p> <p>1 at Affirmative Defense 2, Plaintiffs have failed to</p> <p>2 exhaust administrative remedies or any other</p> <p>3 remedies available pursuant to law or policy.</p> <p>4 A Yes, I see that.</p> <p>5 Q Thank you. What administrative remedies exist in</p> <p>6 the state of Indiana for someone who thinks that</p> <p>7 they have been discriminated against in voting</p> <p>8 procedures?</p> <p>9 A You said in voting procedures? I'm not sure I</p> <p>10 understood the last part of your question.</p> <p>11 Q What administrative remedies exist for people like</p> <p>12 the plaintiffs in this case who believe that</p> <p>13 they've been discriminated against with regard to</p> <p>14 voting in Indiana?</p> <p>15 A With regard to allegations that a violation of the</p> <p>16 Help America Vote Act has occurred with regard to a</p> <p>17 voter's right to vote privately and independently,</p> <p>18 Indiana adopted a statutory remedy set forth in</p> <p>19 Indiana Code 3-6 that permits an individual to file</p> <p>20 a complaint administratively. And as I recall the</p> <p>21 statute -- I may need to refresh my memory on the</p> <p>22 precise detail of that -- believe that is with the</p> <p>23 Indiana Election Division, which then makes an</p> <p>24 initial determination as to whether the facts, if</p> <p>25 true, would constitute a violation of that federal</p>
<p>Page 190</p> <p>1 counsel for the Secretary of State.</p> <p>2 Q Is there anyone serving not as an attorney with the</p> <p>3 Secretary of State who has knowledge about this</p> <p>4 particular topic?</p> <p>5 A No. Not with regard to a legal concept like</p> <p>6 affirmative defenses, no.</p> <p>7 Q And what about the underlying facts?</p> <p>8 A I would not be able to identify anyone in</p> <p>9 particular as most knowledgeable. The individuals</p> <p>10 I've already mentioned in response to previous</p> <p>11 questions might have some factual knowledge. I'm</p> <p>12 referring, of course, to Molly Timperman and</p> <p>13 Jay Phelps as the most likely non-attorney</p> <p>14 individuals.</p> <p>15 Q But you're prepared to testify for the Secretary of</p> <p>16 State about this today; is that correct?</p> <p>17 A I am prepared to testify to the extent of my</p> <p>18 ability.</p> <p>19 MS. BRANDT-YOUNG: Okay. So let's take this</p> <p>20 document down. We're going to mark a document as</p> <p>21 Exhibit K. The file name is 18 Ds ANSWER to</p> <p>22 Complaint. We'll share that screen as well.</p> <p>23 Q Can you see this document, sir?</p> <p>24 A Yes, I can.</p> <p>25 Q Great. So let's go to .pdf page 42 and let's look</p>	<p>Page 192</p> <p>1 law and, if so, proceeds to bring the matter after</p> <p>2 investigation forward to the Indiana Election</p> <p>3 Commission for resolution of the complaint prior to</p> <p>4 the filing of litigation pursuant to the federal</p> <p>5 statute.</p> <p>6 There's a very similar procedure set forth in</p> <p>7 statute with regard to violations of the</p> <p>8 National Voter Registration Act so I might be</p> <p>9 conflating just a little bit here that I'll want to</p> <p>10 refresh my memory to be clear on that, but that's</p> <p>11 the general nature of the administrative remedies.</p> <p>12 Q So there's the HAVA complaints process and that's</p> <p>13 an underlying process that the State alleges the</p> <p>14 plaintiffs should have used here; is that right?</p> <p>15 MS. ABSHIRE: Objection to the extent it calls</p> <p>16 for any kind of legal conclusion.</p> <p>17 A I would have to rely on counsel's evaluation of</p> <p>18 that being the basis of the State's claim, but</p> <p>19 that's how I as an attorney understand the basic</p> <p>20 concept of the affirmative defense that's brought</p> <p>21 forward here.</p> <p>22 Q How do people find out about the HAVA complaints</p> <p>23 administrative process in Indiana?</p> <p>24 A The process is described in some detail on our</p> <p>25 website. There is a very simple one-page complaint</p>

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<p style="text-align: right;">Page 193</p> <p>1 form that is designed for individuals who are not 2 members of the bar to be able to succinctly state 3 the basis for their complaint and the remedies that 4 they might seek. We have had a number of 5 complaints filed under either the NVRA procedures 6 administrative statute and some under the 7 Help America Vote Act administrative procedures, 8 but not a significant number in recent years.</p> <p>9 Q So you said that the HAVA administrative procedure 10 is described on the State's website. Is that 11 information available in a WCAG-compliant way?</p> <p>12 A I would say that the website itself, as we noted, 13 has been determined to be entitled to the AAA 14 rating under WCAG and so, yes, I would assume 15 that's the answer.</p> <p>16 Q In terms of the procedure for pursuing a HAVA 17 administrative complaint in Indiana, is that 18 information available in places or via methods 19 other than the website?</p> <p>20 A As I recall, the grievance procedure is referenced 21 on the voter's bill of rights that is posted in 22 each polling location. That also is available on 23 our website. I don't recall any other additional 24 places where that procedure is referenced.</p> <p>25 Q And is the voter bill of rights available in</p>	<p style="text-align: right;">Page 195</p> <p>1 Q How often do people take advantage of the HAVA 2 administrative remedy in Indiana?</p> <p>3 A Very rarely. In my experience it's declined 4 significantly in recent years. We have periodic 5 Election Division reviews of the grievances as they 6 come in and will typically do those reviews once 7 every three months to four months, and there may be 8 times when no complaint has been submitted that 9 requires attention.</p> <p>10 Q Okay. So let's scroll down a little more and look 11 at Affirmative Defense 4. This is, Any alleged 12 action, inaction, or omission of Defendants did not 13 proximately cause Plaintiffs' alleged injuries.</p> <p>14 So, first of all, what are the injuries of 15 these plaintiffs, as you understand it?</p> <p>16 MS. ABSHIRE: I'm just going to object, 17 Christina, just to the extent it was a legal 18 defense raised by counsel.</p> <p>19 Brad, go ahead and answer to the best of your 20 knowledge.</p> <p>21 THE WITNESS: Yes, I'm happy to do that.</p> <p>22 A Speaking in general terms, having read the 23 documents filed in the litigation, I think they can 24 be characterized that the plaintiffs suffered an 25 injury due to the inaction or omission of the</p>
<p style="text-align: right;">Page 194</p> <p>1 alternative formats, like large print or braille?</p> <p>2 A No, not to my knowledge.</p> <p>3 Q What is the timeline for the HAVA administrative 4 complaint process?</p> <p>5 A There are, as I recall, a accelerated process when 6 a complaint is filed during the final ninety days 7 before election day, and I say this subject to 8 refreshing my recollection on this. I recall that 9 the initial determination regarding whether the 10 claim sets forth sufficient grounds to proceed is 11 to be made within I believe it's, again, a 12 ninety-day period but, again, a more expedited 13 procedure during that period closer to an actual 14 federal election.</p> <p>15 Q And what are the possible outcomes available 16 through this administrative remedy?</p> <p>17 A They are very broad. Assuming that, in fact, a 18 violation's been found to occur by the Indiana 19 Election Commission, the Commission is authorized 20 to take a variety of steps, ranging from 21 recommending legislative action by the 22 General Assembly to referring matters to 23 prosecuting attorneys or other law enforcement 24 officials if there's been a criminal violation. 25 Those are the two that immediately come to mind.</p>	<p style="text-align: right;">Page 196</p> <p>1 defendants in providing the ability to cast their 2 ballot privately and independently as a voter with 3 print disabilities in the manner required by the 4 Help America Vote Act.</p> <p>5 Q So, for instance, as to Kristin Fleschner, who made 6 an appointment with the traveling board that showed 7 up and refused to mark her ballot so her mother did 8 it, what's the injury there?</p> <p>9 A Well, the injury, assuming that the facts are true, 10 is that clearly she was not able to exercise her 11 individual right to cast a ballot and presumably 12 was not able to do so privately without her mother 13 and other individuals seeing her choices that she 14 made in marking her ballot.</p> <p>15 Q What's the cause of that harm?</p> <p>16 A I beg your pardon? What's the cause of the harm?</p> <p>17 Q Yes.</p> <p>18 MS. ABSHIRE: Objection. Calls for 19 speculation.</p> <p>20 A I do have to speculate in this regard. As any 21 county election board official would ruefully 22 acknowledge, one can offer the most comprehensive 23 competent training available and there will be some 24 in the audience who are not A students or C 25 students but are back row students who for whatever</p>

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<p style="text-align: right;">Page 197</p> <p>1 reason may not fully understand or appreciate the 2 importance of the tasks they're going to be 3 carrying out and, therefore, failed under the facts 4 as alleged in that instance to do so.</p> <p>5 Q So the basis for saying that Defendants did not 6 cause the harm is that the traveling board members 7 didn't --</p> <p>8 A I would say, if I could, the traveling board 9 members and county election boards are not the 10 defendants in this litigation.</p> <p>11 Q I agree. The affirmative defense says that 12 Defendants did not proximately cause the 13 Plaintiffs' alleged injuries. It sounds like what 14 you're saying is the cause of the alleged injuries 15 was the traveling board members and their failure 16 to implement their training accurately. Is that 17 what the State is saying?</p> <p>18 MS. ABSHIRE: Once again, just objecting on 19 the basis that it's calling for a legal 20 determination.</p> <p>21 A For me the key word in that particular count is 22 proximately. In my general understanding of that 23 legal term, the damage to the plaintiffs as alleged 24 was proximately caused by the traveling board 25 members.</p>	<p style="text-align: right;">Page 199</p> <p>1 challenging and straining resources beyond anything 2 experienced in the past. The analogy of the 3 1,000-year flood has been used to describe how 4 extreme the demands were.</p> <p>5 And so without, again, my assuming negligence 6 on anyone's part here, to say that it is not 7 uncommon under those extremely high-volume 8 situations where individuals are acting with a 9 deprivation of sleep and surplus of adrenaline that 10 innocent mistakes can be made that have very 11 unfortunate results for the voter.</p> <p>12 Q So is it fair to say that, knowing what you know 13 about the circumstances, you are saddened that 14 Ms. Tackett could not cast her vote but not 15 surprised?</p> <p>16 MS. ABSHIRE: Objection. Calls for, again, a 17 legal determination. Again, these affirmative 18 defenses were raised by counsel.</p> <p>19 Go ahead and answer to the extent you're able.</p> <p>20 A Yes, I'm certainly saddened, because I can 21 appreciate the effort that any voter makes, 22 particularly in the circumstances of 2020, to be 23 able to cast their ballot. Would I say I was 24 surprised? Yes, to a degree. I'm always surprised 25 when an event like this would occur, but</p>
<p style="text-align: right;">Page 198</p> <p>1 Q And in regard to Wanda Tackett, who tried to set up 2 a traveling board appointment but no one ever came 3 and so she was unable to cast her ballot on 4 election day in November of 2020, what's the injury 5 to her?</p> <p>6 A The injury to her was that, although she was 7 presumably entitled to request the services of the 8 traveling board -- there is no evidence presented 9 that she was ineligible for that purpose -- and 10 presumably submitted the application for the 11 traveling board in the required time and for 12 whatever reason unknown to the Secretary of State 13 the particular county election board, which I 14 believe was Vanderburgh County in that particular 15 case, failed to respond to her properly and timely 16 request and she was deprived of her right to vote 17 entirely in addition to voting privately and 18 independently.</p> <p>19 Q What was the cause of that?</p> <p>20 MS. ABSHIRE: Objection. Calls for a legal 21 determination.</p> <p>22 A I have no information regarding the cause of the 23 incident, other than to say that any election 24 official I think in any part of the United States 25 would have described the 2020 general elections as</p>	<p style="text-align: right;">Page 200</p> <p>1 realistically I would not expect an election to be 2 carried out without errors under the environment 3 that we operated in in 2020.</p> <p>4 Q Given that the pandemic is still ongoing and that 5 the requirement for a traveling board remains in 6 place for absentee voters who can't mark their 7 ballot choices by themselves, is it foreseeable 8 that another situation like the one that happened 9 with Ms. Tackett will appear again in the next 10 five years?</p> <p>11 MS. ABSHIRE: Objection. Calls for 12 speculation.</p> <p>13 A I cannot predict it with certainty. Indiana is a 14 large state. Not the largest but a large state in 15 terms of the number of voters involved who might 16 potentially call upon a travel board. So is it 17 conceivable? Yes, certainly. Is it inevitable? 18 No, I don't believe so.</p> <p>19 Q Is it fair to say that that's a risk that you run 20 when the traveling board system is a requirement?</p> <p>21 MS. ABSHIRE: Objection. Calls for 22 speculation.</p> <p>23 A It is to say that any election procedure is subject 24 to human frailty and foibles and so, yes, that 25 would be true with regard to voting by travel</p>

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<p>Page 201</p> <p>1 board, voting by mail, or voting in person as well.</p> <p>2 Q Rita Kersh, who is blind and has a hearing</p> <p>3 disability, was concerned that she would not be</p> <p>4 able to communicate effectively with the traveling</p> <p>5 board and ended up voting in person during a</p> <p>6 pandemic while receiving cancer treatment and</p> <p>7 brought a braille sample ballot to her polling</p> <p>8 place that she had made for herself. What's the</p> <p>9 harm to her?</p> <p>10 MS. ABSHIRE: Objection. Calls for</p> <p>11 speculation.</p> <p>12 A I'm not sure I quite understand the question in</p> <p>13 terms of what is the harm to her. As I understand</p> <p>14 the facts that are alleged, she was, in fact, able</p> <p>15 to cast her ballot. The harm if the facts as</p> <p>16 alleged are true is that she undertook</p> <p>17 responsibilities upon herself to develop her own</p> <p>18 braille ballot, which in its way is not dissimilar</p> <p>19 from ballots that other individuals take to the</p> <p>20 polls marked to remind them of their choices. And</p> <p>21 so I have difficulty characterizing her harm beyond</p> <p>22 that. I would commend her for her efforts and her</p> <p>23 diligence in taking every opportunity to be able to</p> <p>24 cast her vote.</p> <p>25 Q All right. Let's go to the next page of the</p>	<p>Page 203</p> <p>1 ability.</p> <p>2 A Well, to the best of my ability, again, the current</p> <p>3 law as supplemented by 398, of course, was not</p> <p>4 applicable to the individual plaintiffs at the time</p> <p>5 their alleged injuries occurred. But the</p> <p>6 defendants have offered accommodations through the</p> <p>7 traveling board method that we've discussed,</p> <p>8 through the ability to vote by mail, and in</p> <p>9 ensuring that polling places are fully accessible</p> <p>10 for those with physical disabilities of all sorts,</p> <p>11 in permitting individuals to assist the voters.</p> <p>12 Beyond that, I would not characterize whether</p> <p>13 or not those accommodations are in accordance with</p> <p>14 the Americans with Disabilities Act or the</p> <p>15 Rehabilitation Act because the Secretary of State</p> <p>16 has certainly not made a determination in that</p> <p>17 regard.</p> <p>18 Q What reasonable accommodations were provided to</p> <p>19 Kristin Fleschner?</p> <p>20 MS. ABSHIRE: Objection. Calls for a legal</p> <p>21 determination.</p> <p>22 A And if you will pardon me for identifying</p> <p>23 Miss Fleschner, could you remind me?</p> <p>24 Q Certainly, certainly. She is the voter for whom</p> <p>25 the traveling board came to her home with no</p>
<p>Page 202</p> <p>1 exhibit and look at Affirmative Defense 6, which</p> <p>2 reads that, The Defendants have provided and</p> <p>3 offered reasonable accommodations to Plaintiffs in</p> <p>4 accordance with the Americans with Disabilities Act</p> <p>5 and the Rehabilitation Act.</p> <p>6 Do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q So in Defendants' opinion, what reasonable</p> <p>9 accommodations do Defendants offer to people with</p> <p>10 disabilities seeking to vote in the absentee vote</p> <p>11 by mail program?</p> <p>12 MS. ABSHIRE: Objection. Calls for a legal</p> <p>13 determination. Objection because counsel prepared</p> <p>14 this. Also misstates the affirmative defense, as</p> <p>15 it doesn't say anything about the vote from home</p> <p>16 program.</p> <p>17 MS. BRANDT-YOUNG: All of these plaintiffs</p> <p>18 were seeking to vote in the vote by mail program</p> <p>19 and the defense says that the Defendants have</p> <p>20 provided and offered reasonable accommodations to</p> <p>21 Plaintiffs in trying to do that.</p> <p>22 Q What were the reasonable accommodations that were</p> <p>23 provided to these Plaintiffs?</p> <p>24 MS. ABSHIRE: Same objections.</p> <p>25 Go ahead and answer to the best of your</p>	<p>Page 204</p> <p>1 notice, refused to mark her ballot, and her mother</p> <p>2 had to mark the ballot.</p> <p>3 A In that scenario the available accommodations to</p> <p>4 her were limited because of the point in the</p> <p>5 election process in which the events occurred. She</p> <p>6 could, of course, have voted by mail, could</p> <p>7 presumably have voted in person at the polling</p> <p>8 place, and could certainly have taken the matter up</p> <p>9 with the county election board, which I do not</p> <p>10 recall that she did after the traveling board</p> <p>11 engaged in the activities that were alleged, and</p> <p>12 brought that to their attention.</p> <p>13 One accommodation is the provisional ballot.</p> <p>14 Generally an individual cannot vote more than one</p> <p>15 ballot in an Indiana election. In this case if she</p> <p>16 was unable to vote, the accommodation was for the</p> <p>17 county election board to provide her with a</p> <p>18 replacement ballot via the traveling board method</p> <p>19 to override the errors made by the individuals</p> <p>20 comprising the initial traveling board. And</p> <p>21 there's always the accommodation of a provisional</p> <p>22 ballot if there's a dispute regarding the facts as</p> <p>23 to whether who marked the ballot, the voter or</p> <p>24 another person, that the county election board has</p> <p>25 a very generous by other state standard ten days to</p>

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<p>Page 205</p> <p>1 accept evidence and conduct hearings so that her 2 vote could have been counted.</p> <p>3 Q So far as I understand it, Miss Fleschner's ballot 4 was counted. It's just that she had to wait for 5 the traveling board to come to her home and then 6 the traveling board didn't assist her in filling it 7 out so her mother did is what is alleged in the 8 Complaint. Let's put it that way.</p> <p>9 A Assuming that those facts are correct, again, a 10 ballot cast by an individual other than the voter 11 in the scenario we're talking about would not have 12 been in conformity with Indiana law and would have 13 been subject to challenge in the manner that we 14 discussed earlier in this deposition. And so, in 15 my opinion, Miss Fleschner would have been entitled 16 to demand a replacement ballot, which could have 17 taken the form of a provisional ballot that I 18 referenced earlier, which would have reflected her 19 own marking of the ballot rather than her mother's.</p> <p>20 Q Would she have had to go to a polling place in 21 order to do that?</p> <p>22 A No, I don't believe she would have. The 23 provisional ballots are something that can take the 24 form of either a regular ballot that's offered at a 25 polling place or a ballot that's cast by an</p>	<p>Page 207</p> <p>1 sir, that that was a statement and not a question 2 and I'm here to ask you questions and not make 3 statements.</p> <p>4 So let's move on to Wanda Tackett. What 5 reasonable accommodations were offered to 6 Wanda Tackett? She is the voter from 7 Vanderburgh County who she actually asked for a 8 voting machine to be brought to her by traveling 9 board and was informed that they didn't bring 10 around voting machines on the traveling boards and 11 ultimately no traveling board ever came to her home 12 and so she didn't vote. What reasonable 13 accommodations were offered to her?</p> <p>14 MS. ABSHIRE: Objection again on the basis of 15 asking for a legal conclusion.</p> <p>16 A In this particular case Miss Tackett, again, 17 recognizing the practical limitations of events 18 occurring on election day when voting in most cases 19 closes at 6:00 p.m., the accommodations available 20 to her were to contact the county election board 21 and indicate the failure of the process that had 22 occurred and to request that the county election 23 board provide a machine for her to cast her ballot 24 on. Under Indiana law a county election board may 25 authorize a traveling board to carry voting</p>
<p>Page 206</p> <p>1 absentee voter.</p> <p>2 One example in current law comes from the 3 requirement under the Help America Vote Act that an 4 individual who registers for the first time by mail 5 in a state is required to produce proof of 6 residence documentation. If they fail to do so 7 when they register and they fail to do so when 8 they're reminded at the time they apply for an 9 absentee ballot, their absentee ballot itself can 10 assume provisional status that the voter can cure 11 by providing that residence documentation.</p> <p>12 Q Is the primary purpose of a provisional ballot to 13 be a disability accommodation?</p> <p>14 A No. I don't believe that's the primary purpose, 15 but it would certainly be a purpose that could be 16 utilized according to the circumstances of the 17 matter.</p> <p>18 Q Well, and the circumstances of this matter were 19 that she was unable to cast her ballot privately 20 and independently because she needed the assistance 21 by law of the traveling board to do so and was 22 unable to complete that ballot on her own because 23 she's blind. So if the traveling board won't 24 complete her ballot, I'm not sure how much a 25 provisional ballot helps here. But I have to say,</p>	<p>Page 208</p> <p>1 equipment to the absentee voter for that purpose.</p> <p>2 And so the first accommodation I would note 3 would be she could have contacted the county 4 election board and requested that that option be 5 provided.</p> <p>6 Q Again, not to argue with you, but she did call and 7 ask for such a machine and was told in the first 8 instance that no machine would be provided.</p> <p>9 MS. ABSHIRE: Objection. Is there a question 10 there?</p> <p>11 MS. BRANDT-YOUNG: I think that's an excellent 12 objection, Counselor.</p> <p>13 Q Fair to say that's the reasonable accommodation 14 that was offered to her then, sir?</p> <p>15 MS. ABSHIRE: Object just on the basis of 16 legal conclusion.</p> <p>17 Go ahead and answer.</p> <p>18 A That was one accommodation offered to her. Again, 19 the accommodation of voting by mail was available.</p> <p>20 And if I understand the facts in this particular 21 case correctly, Miss Tackett was physically able to 22 go to the polls but for reasons that I would not 23 question chose not to.</p> <p>24 Q Well, and when you say that vote by mail was 25 available to her, what does that mean?</p>

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<p style="text-align: right;">Page 209</p> <p>1 A That means that she had the opportunity to request 2 that an absentee ballot be provided to her that she 3 could cast without reliance on anyone outside of 4 the county election board office or the U.S. Postal 5 Service.</p> <p>6 Q I don't understand, sir. She's blind. How was she 7 supposed to mark a paper ballot if the traveling 8 board didn't come and the law of Indiana makes it 9 illegal for her to mark her own ballot except 10 through the traveling board?</p> <p>11 A I beg your pardon. I was confusing her facts with 12 the other scenarios that you mentioned. So in that 13 case that absentee ballot by mail would not be an 14 accommodation available for a blind voter. It 15 would instead require the other accommodation I 16 referenced.</p> <p>17 Q So in terms of disability-specific accommodations, 18 the traveling board is one way to assist vote by 19 mail voters who can't mark their own ballot 20 privately and independently; is that right?</p> <p>21 A That would be correct.</p> <p>22 Q So that's a reasonable accommodation. Likewise, 23 any options developed pursuant to SEA 398 as it 24 relates to voters with print disabilities will be 25 reasonable accommodations, disability-related</p>	<p style="text-align: right;">Page 211</p> <p>1 basis?</p> <p>2 MS. ABSHIRE: Objection only to the extent 3 it's asking about defendants who aren't currently 4 being deposed.</p> <p>5 A No, not to my knowledge.</p> <p>6 Q Looking at the next one, No. 10, The defendants who 7 do not receive federal funding would not be subject 8 to claims asserted by the plaintiffs.</p> <p>9 Do you see that?</p> <p>10 A I do.</p> <p>11 Q So of the defendants here, the Election Division, 12 the Election Commission, and the Secretary of 13 State, in the Secretary of State's opinion, which 14 ones, if any, do not receive any federal funding at 15 all?</p> <p>16 A In the opinion of the Secretary of State, that 17 would be the Indiana Election Commission which does 18 not receive federal funding.</p> <p>19 Q Is it fair to say that the Indiana Election 20 Commission could conceivably be allocated money 21 under the HAVA compliance procedure?</p> <p>22 A No, I don't believe so. The expenses for that 23 procedure are budgeted for with regard to the 24 Help America Vote Act plan for the state 25 Election Division, not the Election Commission, and</p>
<p style="text-align: right;">Page 210</p> <p>1 accommodations for these voters; is that right?</p> <p>2 MS. ABSHIRE: Objection. Calls for legal 3 conclusion.</p> <p>4 A Yes, I would have that understanding.</p> <p>5 Q Other than the absentee voting board and the 6 SEA 398 options, are there any other nonreasonable 7 accommodations that Indiana offers to voters with 8 disabilities to enable them to participate in the 9 vote by mail system?</p> <p>10 MS. ABSHIRE: Objection again for a legal 11 conclusion.</p> <p>12 Go ahead.</p> <p>13 A Those are the accommodations I can recall at this 14 point.</p> <p>15 Q Okay. So let's skip down to No. 9, The Defendants 16 reserve the right to assert any and all additional 17 affirmative and other defenses that may become 18 applicable based on information learned during 19 discovery or for other appropriate reasons.</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q Without telling me anything that you've said to a 23 lawyer or that a lawyer has said to you, are there 24 any additional defenses that the defendants 25 anticipate raising at this time that have a factual</p>	<p style="text-align: right;">Page 212</p> <p>1 so, no, I'm not aware of a scenario where the 2 Indiana Election Commission would receive federal 3 funding for carrying out its duties under the 4 grievance procedure.</p> <p>5 MS. BRANDT-YOUNG: All right. With everyone's 6 permission, I'd like to take a ten-minute break at 7 this time. Is that okay?</p> <p>8 MS. ABSHIRE: That's fine with me.</p> <p>9 MS. BRANDT-YOUNG: Hearing no objections, 10 let's see each other back here at 5:15.</p> <p>11 THE WITNESS: Very good.</p> <p>12 MS. BRANDT-YOUNG: Thank you, thank you. (A brief recess was taken.)</p> <p>13 MS. BRANDT-YOUNG: All right. So having 14 confirmed that everyone's ready, the plaintiffs 15 have no further questions at this time.</p> <p>16 Ms. Abshire, do you have any redirect?</p> <p>17 MS. ABSHIRE: I do. How is my sound?</p> <p>18 MS. BRANDT-YOUNG: Good. Thank you.</p> <p>19 MS. ABSHIRE: Okay. Give me just one second 20 to look over something. (Attorney reviewing notes)</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MS. ABSHIRE:</p> <p>23 Q You said earlier that the Secretary of State</p>

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<p>1 employed one person whose duties involved knowledge 2 of elections, Jay Phelps; is that correct? 3 A Yes, that's correct. 4 Q Would Molly Timperman, HAVA administrator, also 5 have election knowledge? 6 A Yes, she would. She had formerly been employed by 7 the voting system technical oversight program, the 8 Ball State entity I referenced that has involvement 9 in the certification of voting systems, and so, 10 yes, she would have knowledge. But in terms of 11 identifying one individual, I designated 12 Jay Phelps. 13 Q And how long has Jay Phelps worked for the 14 Secretary of State's office? 15 A Approximately two months. He previously served as 16 Bartholomew County circuit court clerk for almost 17 eight years. 18 Q And how long has Molly Timperman worked for the 19 Secretary of State's office? 20 A For approximately a month, but was an employee of 21 the Ball State University program for I believe at 22 least a year and perhaps two years. 23 Q You mentioned earlier that you had not discussed 24 this deposition with anyone other than counsel. Do 25 you recall taking part in a meeting where</p>	<p>Page 213 1 A The budget as passed by the Indiana General 2 Assembly is found on the General Assembly's website 3 as part of the 2021 enrolled acts. It was 4 House Enrolled Act 1001 of 2021 and would be 5 searchable under the bill number as well as the 6 public law number. 7 Q You'll have to forgive me for not remembering 8 exhibit names. Is the exhibit that was described 9 as the Agency Summary the budget bill as passed by 10 the legislature and signed by Governor Holcomb? 11 A No. The document I saw was what appeared to be an 12 internal budget agency document of the sort that 13 was presented during the Election Division 14 deposition that I participated in. 15 Q Can you explain what budget director Zach Jackson 16 had said was the purpose of that Agency Summary? 17 A Zach Jackson had a discussion with Valerie Warycha, 18 who serves as my general counsel, and advised her 19 after this question came up that this was in 20 essence what I might characterize as an internal 21 accounting document used within the budget agency 22 with numbers I hesitate to say arbitrarily but not 23 reflecting actual dollars used as place holders 24 where an agency might at some point in the future 25 receive federal funding so that when and if it did</p>
<p>Page 214 1 Allen Carter, Rachel Hoffmeyer, and Jay Phelps were 2 all present as part of a meeting to prepare for 3 this deposition? 4 A I honestly am not recalling that. I'm familiar 5 with the individuals that you mentioned, but no, I 6 don't believe so with regard to preparing for this 7 deposition. 8 Q Do you recall meeting in the attorney general's 9 office a few weeks ago with these individuals? 10 A Yes. Yes, I do recall meeting in the attorney 11 general's office. I was recalling the Secretary of 12 State's office is the venue when we usually have 13 meetings, but, yes, you're correct, I did have a 14 meeting in this office with those individuals. 15 Thank you. 16 Q And did you also speak to someone named Joe McLain 17 in preparation for this deposition? 18 A Joe McLain is my executive assistant. He did 19 provide some information regarding work that he had 20 prepared. He formerly served as HAVA administrator 21 under a previous Secretary of State several years 22 ago. So yes, that would be correct. 23 Q Switching gears a minute. Where can an individual 24 find the budget as passed for the Indiana Secretary 25 of State?</p>	<p>Page 216 1 the numbers could be plugged into that internal 2 budget agency document. 3 MS. ABSHIRE: That's all the questions I have, 4 Christina. 5 MS. BRANDT-YOUNG: Great. Thank you. We'll 6 do some recross. 7 REDIRECT EXAMINATION 8 BY MS. BRANDT-YOUNG: 9 Q Who is Allen Carter? 10 A Allen Carter is the communications director for the 11 office of the Secretary of State. 12 Q Who is Rachel Hoffmeyer? 13 A Rachel Hoffmeyer is the Deputy Secretary of State. 14 Q Have you ever looked at the budget as passed and 15 read it as a document from beginning to end? 16 A Have I ever done that? I suspect that sometime in 17 my tenure in State Government I have done that, but 18 in my current position I'd have to say I've done 19 that only with regard to provisions relevant to the 20 elections process. There are sometimes substantive 21 election law changes that are amended into the 22 budget bill at the last minute in conference 23 committee that require deeper scrutiny than just 24 the actual agency appropriation would be one recent 25 example I can think of.</p>

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<p>1 Q Does the budget as passed contain any accounting of 2 how much each agency of the State receives in the 3 budget as passed?</p> <p>4 A Well, the budget appropriates funds but contains a 5 general provision which permits funds appropriated 6 to be withheld and not available to the State 7 agency based on a finding by the budget agency that 8 financial difficulties the State encounters 9 requires that funds previously appropriated not 10 actually be provided.</p> <p>11 Q My question was actually: Is there anything in the 12 budget as passed that totals up everything that has 13 been allocated to each agency in the budget as 14 passed?</p> <p>15 A No. I am not aware of a sum total at the bottom of 16 a column, if I'm understanding your reference 17 correctly. Instead there are individual line items 18 for specific purposes and it's up to the reader to 19 come up with the total sum.</p> <p>20 Q If you had to choose between the State budget 21 agency and me as the person who read each line item 22 in the State budget as passed to figure out what 23 the total allocation to the Secretary of State 24 would be, which one would you choose?</p> <p>25 A With all due respect, I would choose the State</p>	<p>Page 217</p> <p>1 that anybody else would like to accomplish while 2 we're here?</p> <p>3 MS. ABSHIRE: I'll just note for Michele that 4 Defendants will also take an electronic copy only.</p> <p>5 THE REPORTER: Okay. Thank you.</p> <p>6 MS. BRANDT-YOUNG: Thank you all very, very 7 much.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 MS. ABSHIRE: Thank you.</p> <p>10 (Exhibits A-K were marked.)</p> <p>11 (The deposition concluded at 5:30 p.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 budget agency.</p> <p>2 Q I would too, sir.</p> <p>3 MS. BRANDT-YOUNG: No further questions. Any 4 redirect?</p> <p>5 MS. ABSHIRE: No. We're all good.</p> <p>6 MS. BRANDT-YOUNG: Then I think that completes 7 our work here together today. We really want to 8 thank you, sir. We want to thank you for showing 9 up for one day but showing up for two days in a row 10 and being so helpful and informative is really 11 quite a treat for us and we are really very 12 grateful to you.</p> <p>13 THE WITNESS: You are very generous. I 14 appreciate your courtesy and professionalism in 15 conducting the deposition and applaud you for it.</p> <p>16 MS. BRANDT-YOUNG: Well, thank you very much, 17 sir. So we'll see you again tomorrow morning.</p> <p>18 Is there anything else that we need to 19 accomplish with Michele today?</p> <p>20 THE REPORTER: What kind of copies of the 21 transcript today would you both like?</p> <p>22 MS. BRANDT-YOUNG: Plaintiffs are only 23 requesting an electronic copy.</p> <p>24 All right. So that completes everything that 25 the plaintiffs need for today. Is there anything</p>	<p>Page 218</p> <p>Page 220</p> <p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF INDIANA 3 INDIANAPOLIS DIVISION</p> <p>4 AMERICAN COUNCIL OF THE) 5 BLIND OF INDIANA,) 6 INDIANA PROTECTION AND) 7 ADVOCACY SERVICES COMMISSION,) 8 KRISTIN FLESCHNER,) 9 RITA KERSH, AND) 10 WANDA TACKETT,) 11 Plaintiffs,) 12 -v-) CAUSE NO. 13) 1:20-cv-3118-JMS-MJD 14 INDIANA ELECTION COMMISSION;) 15 THE INDIVIDUAL MEMBERS OF THE) 16 INDIANA ELECTION COMMISSION,) 17 IN THEIR OFFICIAL CAPACITIES;) 18 INDIANA SECRETARY OF STATE,) 19 IN HER OFFICIAL CAPACITY; THE) 20 INDIANA ELECTION DIVISION;) 21 AND THE CO-DIRECTORS OF THE) 22 INDIANA ELECTION DIVISION, IN) 23 THEIR OFFICIAL CAPACITIES,) 24 Defendants.) 25 Job No. 167734</p> <p>The Zoom 30(b)(6) deposition of the Indiana Secretary of State upon oral examination of BRADLEY KING, taken in the above-captioned matter, on December 20, 2021, and at the time and place set out on the title page hereof.</p> <p>It was requested that the deposition be transcribed by the reporter and that same be reduced to typewritten form.</p> <p>It was agreed that the reading and signature by the deponent to the deposition were waived on behalf of the parties plaintiff and defendant by their respective counsel, the witness being present and consenting thereto, the deposition to be read with the same force and effect as if signed by said deponent.</p>

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<p>1 STATE OF INDIANA 2 COUNTY OF MARION 3 I, Michele K. Gustafson, CRR-RPR, a 4 Notary Public in and for said county and state, do 5 hereby certify that the deponent herein was by me 6 first duly sworn to tell the truth, the whole truth, 7 and nothing but the truth in the aforementioned 8 matter; 9 That the foregoing deposition was taken on 10 behalf of the Plaintiffs; that said deposition was 11 taken at the time and place heretofore mentioned 12 between 10:00 a.m. and 5:30 p.m.; 13 That said deposition was taken down in 14 stenograph notes and afterwards reduced to typewriting 15 under my direction; and that the typewritten 16 transcript is a true record of the testimony given by 17 said deponent; 18 And that the reading and signature by the 19 deponent to the deposition were waived on behalf of 20 the parties plaintiff and defendant by their 21 respective counsel, the witness being present and 22 consenting thereto, the deposition to be read with the 23 same force and effect as if signed by said deponent. 24 25</p>	<p>Page 221</p>
<p>1 I do further certify that I am a disinterested 2 person in this cause of action; that I am not a 3 relative of the attorneys for any of the parties. 4 IN WITNESS WHEREOF, I have hereunto set my 5 hand and affixed my notarial seal this 5th day of 6 January, 2022. 7 8  9 10 11 12 13 My Commission expires: August 31, 2025 14 15 Job No. 167734 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 222</p> <p></p>